

In The Matter Of:
ECIMOS, LLC v.
Carrier Corporation

Joshua A. Siegel
January 11, 2018



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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ECIMOS, LLC,

Plaintiff,

vs.

Case No:

2:15-cv-02726-JPM-cgc

CARRIER CORPORATION,

Defendant .

THE DEPOSITION OF JOSHUA A. SIEGEL

January 11, 2018

Lisa J. Blake, LCR, RPR
LCR #483

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1 The deposition of JOSHUA A. SIEGEL, taken
2 on behalf of the Plaintiff, pursuant to Notice, on
3 January 11, 2018, beginning at approximately
4 9:10 a.m. in the law offices of Farris Bobango
5 Branan, PLC, 999 S. Shady Grove Road, Suite 500,
6 Memphis, Tennessee 38120.

7 This deposition is taken in accordance
8 with the terms and provisions of the Federal Rules
9 of Civil Procedure.

10 All forms and formalities are waived, and
11 objections as to relevancy, materiality and
12 competency are reserved, to be presented at or
13 before the hearing. Objections as to the form of
14 the question must be made at the time of the taking
15 of the deposition. The signature of the witness is
16 waived.

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1 A P P E A R A N C E S

2 For the Plaintiff:

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4 Attorney at Law
Bateman Gibson
5 22 N. Front Street
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6 Memphis, Tennessee 38103

7 For the Defendant:

8 MR. GARRETT M. ESTEP
9 MR. ROBERT A. MCLEAN
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12 Reported by:

13 MS. LISA J. BLAKE, LCR, RPR
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17 Also present:

18 MR. STEPHEN OLITA
19 MR. JEFF CARR
MR. JAMES CHENAULT
20 MR. J.C. STEWART
MR. DOUG FEMEC

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WITNESS:

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by Mr. Gibson

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**Exhibits were marked consecutively among the
deponents, and are bound in separate binder.

1 JOSHUA A. SIEGEL,
2 having first been duly sworn, was examined and
3 testified as follows:

4 DIRECT-EXAMINATION

5 BY MR. ESTEP:

6 Q. State your name, please.

7 A. My name is Joshua Alexander Siegel.

8 Q. And your address?

9 A. It's 2006 Hanover Street, Silver Spring,
10 Maryland.

11 Q. Okay. Mr. Siegel, I've read your report
12 and your -- and I've heard your background and
13 testimony and so I -- because you've testified a
14 number of times, I assume you know all the
15 deposition rules.

16 A. Sure. But if you want to review anything
17 with me, that's fine, too.

18 Q. And you've heard them all that we've --

19 A. I've heard them all today, yes.

20 Q. Okay. I'm not going to go over them with
21 you.

22 A. Okay.

23 Q. Now, first, before we do anything, I want
24 to -- Well, let me -- let me go through just a few
25 background and we'll put your report into evidence.

1 Where are you employed?

2 A. I'm currently employed at DisputeSoft.
3 It's in Potomac, Maryland.

4 Q. What does DisputeSoft do?

5 A. We are primarily a litigation consulting
6 firm, so we assist counsel in dealing with
7 technology issues surrounding software, large
8 project implementations. So if there is a contract
9 to develop a new program for a large state, there's,
10 like, seven phases and the project fails around
11 phase three, a lot of times we'll be hired in order
12 to help tease apart the issues that caused the
13 project to fail.

14 In addition, another practice area we deal
15 with is intellectual properties, so patents,
16 copyrights, trade secrets as it pertain to software
17 and assisting counsel and triers of fact in getting
18 to the truth in those matters, understanding what
19 really happened and where the facts lie.

20 Q. Okay. Does DisputeSoft create any software
21 or --

22 A. Generally --

23 Q. -- database?

24 A. -- we don't develop too much. We have a
25 few in-house tools developed for source code

1 comparison, for example, because that's a common
2 thing that people want to do in these litigations
3 involving copyrights and trade secrets.

4 Q. But that's usually comparing to existing
5 software systems; correct?

6 A. Yes, I believe so. It will be difficult to
7 compare to nonexisting software systems, I think,
8 so.

9 Q. Right.

10 A. I don't -- Okay.

11 Q. I'm just trying to see if you've ever --
12 well, if DisputeSoft creates or develops a software
13 system from scratch for a manufacturing facility --

14 A. Oh.

15 Q. -- such as what we have in this case.

16 A. Generally, we are not involved in that sort
17 of practice. Like I said, we do have some current
18 projects that we're working on that involve our
19 internal work processes, to make our lives easier.

20 Q. Okay. That's for your own company, though?

21 A. That's for the own company, we're not --

22 Q. Nobody's hired you to do that?

23 A. Nobody has -- Yes, that's right.

24 Q. So in what you've just described that
25 DisputeSoft does, what part of that do you

1 personally get involved in? All of it or --

2 A. I mean, if you look at my CV, I've been
3 involved in parts of all of those things. So my
4 particular areas of expertise involve computer
5 forensics. So I'm an NK certified examiner, so I
6 can do digital forensic analysis.

7 I've also been involved in several
8 copyright and trade secret misappropriation matters.
9 I've also been involved in a few patent cases, Apple
10 verse HTC, had to do with their Android source code.

11 A lot of my work involves reviewing,
12 understanding and comparing source code. That's a
13 lot of my day-to-day. And then determining what --
14 well, what's going on. And then if there had been
15 any evidence of copying and that sort of thing.

16 Q. Is what's been marked as Exhibit 123 there,
17 is that a copy of your expert report in this case?

18 A. It does appear to be, with some markup.
19 There's some notes on here.

20 Q. I gave you the wrong one.

21 A. Yeah.

22 Q. Wait a minute, how did I --

23 A. That one's marked as the exhibit, though.
24 So I'm going to say no.

25 Q. My goodness. Don't know what happened with

1 that. I don't know how that happened. All right.

2 A. I didn't look at the notes.

3 MR. GIBSON: Here we go. I'm going to
4 change 123.

5 Q. (BY MR. GIBSON) Does that appear to be --
6 Well, look through the whole thing.

7 A. It appears to be my report printed
8 environmentally and double-sided.

9 Q. Are there no -- Yeah, one came in
10 double-sided and one came -- I don't know why that
11 happened.

12 A. It does appear to be my report.

13 MR. GIBSON: Okay. That's the only other
14 copy I have, Garrett. For some reason it's
15 double-sided. But if we want to make one that's
16 single-sided later we can do it --

17 MR. ESTEP: Sure.

18 MR. GIBSON: -- if that's easier for the
19 record.

20 Q. (BY MR. GIBSON) Okay. And you can look at
21 yours --

22 A. I have a copy.

23 Q. -- if you'd prefer. We'll just leave that
24 one in the stack.

25 A. I just didn't know if you wanted that one

1 back.

2 Q. That's fine.

3 All right. Now, so I went ahead and jumped
4 to the Exhibit there, 123, so we could go a little
5 bit more into your background.

6 If you'll look at page 9, which I guess is
7 about your -- page 9 of your background part of
8 the -- which I think is Attachment One.

9 A. Oh, okay. Okay.

10 Q. It says Employment History. So you've been
11 at DisputeSoft since January of 2011?

12 A. Yeah, I started over Christmas, but
13 officially in January of 2011, I would say.

14 Q. So what you described that DisputeSoft --
15 what its business model is is what you've been doing
16 since January of 2011 or December of 2010?

17 A. That and systems administration. I'm also
18 the systems administrator for the office, so that
19 involves maintaining all our databases and computers
20 and networks, infrastructure. I wear a lot of hats.

21 Q. Okay. Did you create that database or was
22 it existing when you came to DisputeSoft in 2010 --

23 A. Can you --

24 Q. -- 2011?

25 A. -- specify?

1 Q. Did you build it?

2 A. Did I design the database --

3 Q. Yeah, did you design and build it?

4 A. -- or did I create the database? Because I
5 created the database, but I didn't design and build
6 the database.

7 Q. Okay. What do you mean by -- what's the
8 difference between --

9 A. So databases --

10 Q. -- design and build?

11 MR. ESTEP: Try not to talk over each
12 other.

13 THE WITNESS: Oh, sorry.

14 Q. (BY MR. GIBSON) Okay. What's the
15 difference between design and build and create?

16 A. So, in my mind, it's my understanding that
17 designing a database would be more in line with
18 picking the fields, the types that are going to go
19 into the fields, the field lengths, how the database
20 is going to structured, how it's going to interact,
21 how the keys work, whether there's indexes or not,
22 you know, the planning stage of how a database is
23 going to be laid out.

24 So I normally deal with database
25 administration, which is running queries,

1 understanding how the database works, restoring
2 backups, performing analysis on databases, using
3 queries, like, to get data out of ticketing systems.

4 A lot of times there's claims related to
5 too many defects in a software. So we'll need to
6 pull out all the defects that are related to certain
7 levels of priority. So the critical defects are
8 always the most important and how long they've been
9 open. So we can use SQL to do that sort of thing.
10 Yeah, and I would say I think we use the SQL quite a
11 bit in our office for that. There's several
12 systems. I use SQL as a back-end that I administer.

13 Q. Okay. Okay. So by "create," you mean
14 creating what?

15 A. So you create an instance of a database.
16 So you can restore it from a backup, you can install
17 a new software that creates a blank database, you
18 can right click and say a new database. It's not --
19 it's not too complicated in the SQL server
20 management Studio Tool, which is often what I'll use
21 to do database management.

22 Q. So you're, essentially, creating a new
23 version of the same database?

24 A. I'm not sure if that's exactly accurate. I
25 mean, you -- I'm not sure in what context you're

1 asking me the question, I guess. Could you clarify?

2 Q. Well, take the MES database. I understand
3 that after 9 months the data is archived.

4 A. I understand that as well, yes.

5 Q. So are you creating a new database at that
6 point?

7 A. I wouldn't expect so, no. I would expect
8 you would clear the data out or copy it to an
9 archive database or maybe you make a backup. I'm
10 not sure what the archive processes are at Carrier.
11 I mean, a lot of places will make a database backup
12 and then further restore -- sorry, back that up even
13 further to tape and then put that in a vault
14 somewhere, depending on how many years of records
15 you need to keep. Like, if you're in government,
16 for example, you might need to keep a lot of
17 records.

18 Q. Okay. And then if you look down at your
19 experience -- employment experience before January
20 2011 on your resume', there it says, "IT manager and
21 systems administrator at TM Associates Management,
22 Inc., from October 2005 to January 2011?"

23 A. Uh-huh. Yes.

24 Q. Did you develop or design any software
25 solutions or databases in that job?

1 A. Develop and design, no.

2 Q. Okay. Now, before October 2005 what did
3 you do?

4 A. I was a college student.

5 Q. Okay. Up there at the Wesleyan University?

6 A. Uh-huh, Wesleyan University up in
7 Connecticut.

8 Q. Now, I've looked through here extensively,
9 Attachment One, but I may have missed it. I may
10 have gone through it too quickly. I don't think I
11 see even the word "LabVIEW" in Attachment One
12 anywhere.

13 Is that true? Did I -- did I --

14 A. That's true, yes.

15 Q. Did I miss it? Okay.

16 What is your LabVIEW experience besides the
17 30 minutes you spent on the airplane looking at the
18 LabVIEW manual that you talked about at the hearing?

19 A. I don't have much experience with LabVIEW,
20 as I stated at the hearing. I don't purport to be a
21 LabVIEW expert. It's my understanding that counsel
22 hired Doug Femec to be an expert in LabVIEW for this
23 matter.

24 It's also further my understanding that
25 LabVIEW is not even an issue in this case, according

1 to most of the experts and testimony I've heard.

2 Q. Okay. But you did compare the LabVIEW
3 software, which is called the RES software that was
4 created in LabVIEW, to the Visual Basic 6 software
5 that has been called the ECI software; right?

6 A. What I did, as detailed in my report, I
7 used the text of the VB6 source code to compare the
8 text elements of the LabVIEW source code to
9 determine if any of the names on the registration
10 for the 267 APIs were present in the RES software.

11 To do that task I did not need to
12 understand how LabVIEW worked, I just needed to
13 determine if there was evidence of copying.

14 Q. Okay. Did you check the aliased names?

15 A. I don't understand what you mean by that
16 question.

17 Q. Have you -- Well, you've been here for two
18 days, you heard what Mr. Carr and Mr. Chenault said
19 about aliased names.

20 So do you agree with how they're defining,
21 for this case at least, what the aliased names mean?

22 A. I'm not still quite sure what you mean by
23 alias names. But if I were to define "alias," I
24 would say that that is a reference to something
25 else, and that something else would need to still

1 exist for that alias to work. So if you need to
2 have an alias, like, if you're a person going by an
3 alias and you say, "Well, yeah, just call me
4 Skeeter," if that person's name is Steve or
5 something like that, you would still need to have
6 Steve existing for that alias to work.

7 Q. Well, Steve and Skeeter are pretty far
8 apart. But it's slightly aliased if I say "Joshua"
9 and "Josh;" right?

10 A. Certainly.

11 Q. Okay. That's -- that's kind of what was
12 done here; right?

13 A. Not to my understanding, no.

14 Q. Not to your understanding? Okay.

15 Well, have you looked at the 267 names as
16 they exist now in the MES database?

17 Let me -- let me -- let me rephrase that.

18 Have you looked or found the test
19 procedures or the valid tests as they exist in the
20 MES database today?

21 A. It's my understanding that "valid tests" is
22 a term that was used in conjunction with the ECI
23 software.

24 I have seen the test procedures that
25 Carrier has entered into the MES database, if that's

1 the question. And that's -- I'm going to answer yes
2 to that question.

3 Q. And I see from your report all this time
4 you've had the ECI database.

5 A. I have had and relied upon the ECI
6 registered scripts that were provided to me by
7 counsel, which I believe came from Mr. Olita and
8 yourself, Mister -- Mr. Dixon[sic].

9 Q. Yeah. But my point is, have you compared
10 the test procedures or the valid tests that are now
11 in the MES database to the test procedures and the
12 valid tests that were or are in the archived last
13 version of the ECI database?

14 A. No. That was not part of the scope of my
15 engagement.

16 Q. Okay. So if my expert witnesses testify
17 that they exist in much -- either the exact same
18 form or much the same form in the MES database that
19 they -- by "they," meaning the stored procedure -- I
20 mean the test procedures and the valid tests -- as
21 they existed in the ECI database, you don't know
22 anything differently?

23 A. I would disagree with that largely because,
24 to my understanding, that the registration is where
25 the database scripts, which covers the structure,

1 sequence, organization of the database. I reviewed
2 the registration of the database script. That does
3 not include the data that would be in the database,
4 which is the steps, the order of the test
5 procedures. This is my understanding, again.

6 It's also my understanding that there is a
7 dispute over the ownership of the software and
8 database in this case. So from my point of view --

9 Q. Whoa, whoa.

10 A. -- a lot of this was jointly developed,
11 from what I've heard and the testimony so far.

12 Q. Now, is that affecting your opinion at all
13 that there's a dispute over whether or not ECI owns
14 the license or Carrier owned the license?

15 A. Let me think about that for a second.

16 Q. Okay.

17 A. So I would say my opinions are based on the
18 fact that there was a purchase order in place prior
19 to there being any licensing agreement.

20 Q. That's a legal issue, isn't it?

21 A. Sure. Yes.

22 Q. Okay. You hadn't been -- you hadn't been
23 hired as a lawyer in this, a legal --

24 A. No.

25 Q. -- expert in this case?

1 A. I have not been.

2 Q. Now, let me -- that brings me to 124. Take
3 a look at that, if you would, and read the sentence
4 down there. If you would read it out loud, I would
5 appreciate it.

6 A. The sentence at the bottom?

7 Q. Yes, at the bottom.

8 A. Okay. So this is a printout from Thursday,
9 August 31.

10 Q. It's a printout, but I'm -- I'm
11 representing that that was on the ECI software at
12 least as of --

13 A. As of what date?

14 Q. -- 2004.

15 A. Okay. It says, "Warning."

16 Q. We believe, anyway.

17 A. Okay. "Unauthorized reproduction or
18 distribution of this program or any portion of it
19 may result in severe civil or criminal penalties and
20 will be prosecuted to the maximum extent possible
21 under law."

22 Q. Okay. Now, that was -- are you aware that
23 that was on the ECI software?

24 A. I am aware of that, yes.

25 Q. Okay. And sitting at the Carrier plant for

1 the whole time it was in use?

2 A. That is not my understanding.

3 Q. From the time -- I'm sorry.

4 A. Okay.

5 Q. From the time that they made the conversion
6 to WINDOWS XP?

7 A. That is also still not my understanding.

8 Q. Well, when --

9 A. I don't know exactly when this came into
10 use. But it is my understanding that most parties
11 agree that it was in the area of 2004 sometime.

12 Q. Okay. I think that -- well, so my
13 understanding -- we don't need to get into that,
14 that's --

15 A. Sure.

16 Q. -- that's a factual still.

17 But if I tell you that 2004 is when they
18 changed from DOS to WINDOWS XP, you don't have
19 anything differently to --

20 A. My understanding that that actually
21 happened earlier. But I thought it was around 2002
22 and that if this doesn't appear until 2004 there
23 would have time --

24 Q. Somebody -- Okay.

25 A. -- so that would have been two years where

1 this --

2 Q. But whether it's 2002 or 2004, for the
3 better part of almost a decade that -- that was
4 sitting on the system out there at Carrier?

5 A. Sure.

6 Q. Is that fair to say? Okay.

7 And Carrier is one of the largest assets --
8 or the eighth largest company in the country. Does
9 that surprise you that they allowed that to stay on
10 their database if they thought they owned it?

11 MR. ESTEP: Object to form.

12 MR. GIBSON: Go ahead.

13 A. It's also my understanding this wouldn't
14 have been on the database, this probably would have
15 been on the --

16 Q. (BY MR. GIBSON) I'm sorry, I said the
17 data -- Let me rephrase the whole thing.

18 A. Okay.

19 Q. Would that -- I'm going to preface it by
20 talking about the eighth largest corporation in the
21 country. United Technologies is the eighth largest
22 corporation in the country. Carrier Corporation is
23 one of their largest in assets.

24 Does it surprise you that a company that
25 sophisticated would allow that to stay on their --

1 what they believe their own licensed -- I mean,
2 their own software system?

3 MR. ESTEP: Object to form.

4 Q. (BY MR. GIBSON) Would be on there the
5 whole --

6 A. Actually, could I see that again?

7 Q. Yes.

8 A. Just to be clear.

9 (Document was passed.)

10 Q. And then I'll rephrase the question again,
11 'cause I didn't say it very well.

12 A. Okay.

13 (Witness reviewed a document.)

14 A. Okay. You said you'll rephrase?

15 Q. Now, does it surprise you that a company as
16 sophisticated as United Technologies and its
17 subsidiary or affiliate or whatever it is, Carrier
18 Corporation, would allow that message to remain on
19 software it thought it owned for nearly a decade?

20 MR. ESTEP: Object to form.

21 Q. (BY MR. GIBSON) Go ahead.

22 A. I'm not sure. I don't know what context in
23 that screen popped up. I've certainly heard
24 testimony that, you know, conflicts in terms of how
25 often that would have shown up to an operator. But

1 if I'm an operator on the floor, not the management,
2 you know, they might not be talking to each other.
3 So I would say it might be a little unusual, but it
4 doesn't surprise me to hear that.

5 Q. Why doesn't it surprise you?

6 A. Well, I'm not sure the people that would be
7 concerned about intellectual property would be the
8 people that were seeing that screen, the people on
9 the floor.

10 Q. Who needs to be concerned about
11 intellectual -- What about Mr. Stewart, should he be
12 concerned about intellectual property --

13 MR. ESTEP: Object to form.

14 Q. (BY MR. GIBSON) -- in his job at Carrier?

15 A. I'm not sure how much he knows about
16 intellectual property, to be perfectly honest. But
17 I would expect he would be concerned about it.

18 Q. What type of employees at Carrier should be
19 concerned about that being on the software that
20 Carrier thinks it owns?

21 A. The attorneys.

22 Q. Okay.

23 A. And the developers, I would say.

24 Q. Developers.

25 And the attorneys aren't going to learn

1 about it unless they're also involved in IT. The
2 attorneys aren't going to learn about it unless
3 somebody brings it to their attention. Right?

4 MR. ESTEP: Object to form.

5 A. That's what I would expect.

6 Q. (BY MR. GIBSON) Okay. Should the IT folks
7 bring it to the lawyers attention immediately when
8 they see that on there just one time in a decade?

9 MR. ESTEP: Object to form.

10 A. I -- I really am not sure how things work
11 at Carrier, but I would expect that someone would
12 mention it.

13 Q. (BY MR. GIBSON) Okay. And after seeing
14 Exhibit 124, are you still of the opinion that
15 Carrier owned the software?

16 MR. ESTEP: Object to form.

17 A. After all the material I've seen, I would
18 say yes. I mean, I've heard testimony of James
19 Rindin saying that everybody worked together to
20 develop these tests. Again, I know there's a
21 dispute over who owns it, but it was built for
22 Carrier in Carrier's plant.

23 Q. (BY MR. GIBSON) It was? Who told you that?

24 A. That's my understanding from counsel.

25 Q. Really?

1 A. Yeah.

2 Q. Who? These -- these lawyers right here
3 told you that?

4 A. I don't know the material they were --
5 perhaps I misstated something.

6 Q. Well, no, no, no, no, you're stuck with
7 what you're given. Right? I mean, you can't --
8 well, you're stuck with your works in your report;
9 right?

10 A. Uh-huh.

11 Q. Is there anything that's not part of the
12 scope -- Have you reviewed your scope of work
13 before?

14 A. Yes.

15 Q. Okay. So you don't need to read it again?

16 A. I mean, I can look at it again.

17 Q. Is there anything else?

18 And I know you've listened to testimony for
19 two days from my experts. Is there any anything
20 else that --

21 A. I mean, mostly, I was just engaged to
22 determine if there was evidence of copying. So I
23 don't want to formulate any new opinions this time
24 based on, you know, who developed what. I'm not
25 trying to -- to step in it, as it were.

1 Q. Okay. But you've got 10 pages -- or 9 of
2 your 10 pages of your background deal with cases and
3 copying and --

4 A. Uh-huh.

5 Q. -- this --

6 A. This type of case.

7 Q. This type of case?

8 A. Yes.

9 Q. And so if you saw -- if you were hired by
10 Carrier, not told anything about this case, and they
11 sent you out there and said, "Hey, pull up the ECI
12 software that's archived over here and tell me if
13 you see anything," if this was the first screen you
14 saw when you pulled it up, would -- would that mean
15 anything to you?

16 A. If I were --

17 Q. When I say "this," Exhibit 124.

18 A. So this is a hypothetical now?

19 Q. Yeah.

20 A. So in the hypothetical situation where we
21 were -- Sorry, if you want --

22 Q. We'll ask you. Is this the first time
23 you've ever seen this?

24 A. I've seen that maybe once before.

25 Q. Okay. But only as an exhibit --

1 A. As an exhibit.

2 Q. -- in the case?

3 You didn't pull up the software, the ECI
4 software, and see this?

5 A. I was present for the inspection that was
6 ordered by the Court in May -- was it 2016? 2015?
7 I'm not exactly sure on the date. But I don't
8 remember seeing that screen specifically, but it may
9 have been there. I haven't reviewed the videos or
10 anything like that.

11 Q. Okay. Now at that point we're -- we've
12 changed over to the RES software; right?

13 A. Correct.

14 Q. Okay.

15 A. So I wouldn't have seen that screen pop up.

16 Q. By the way, you do know the rules already,
17 but if you need to take a break --

18 A. I'm good for now. If you guys need a
19 break, though, we can do that.

20 Q. Anybody that's important -- Everybody's
21 important. But anybody that's important to this
22 deposition, which are the lawyers and you, everybody
23 else can take a break as they need to.

24 A. Once this coffee runs through me, I'll
25 need a break, so.

1 Q. And the court reporter. And Lisa.

2 All right. Now, so if the first thing you
3 did was pull up the ECI software -- This is a
4 hypothetical again --

5 A. Uh-huh.

6 Q. -- and you saw Exhibit 124, would you
7 investigate to see what -- what in the world is that
8 doing on the software that Carrier claims it owns?

9 A. If I were engaged, almost always litigation
10 has already begun. So I would say we need to figure
11 out how this software was created, who created it,
12 when this licensing language appeared to determine,
13 you know, how the software was developed and under
14 what methods it was, you know, provided to the
15 client.

16 Q. Now, if the facts are that Mr. Olita
17 already had a completed IPCS system, the drawings
18 for the assembled hardware, the ECI software and the
19 ECI database, and he had already had that system
20 developed and then brought it to the Carrier
21 Collierville plant to implement, does that change
22 your opinion in any way? Would that change your
23 opinion in any way?

24 MR. ESTEP: Object to form.

25 Q. (BY MR. GIBSON) Again, I'll call it a

1 hypothetical. Even though it's true, I'll call it a
2 hypothetical since you believe the facts are
3 different. You may have been told the facts are
4 different than that.

5 A. At what timeframe are you talking about?

6 Q. I'm talking about 1992.

7 A. 1992, that -- my understanding is that
8 there --

9 Q. Or -- or --

10 A. -- was a DOS version or, you know, a basic
11 version.

12 Q. Back --

13 A. I don't have any questions about whether or
14 not Mr. Olita and ECI developed the software, if
15 that's what we're trying to get to, but...

16 Q. Okay. So you have been told that Mr. Olita
17 developed the software in the database?

18 A. For 1992 --

19 Q. DOS -- back in the DOS days.

20 A. -- you know, that there was some agreement,
21 which I'm not sure on the basis of the VB6 time, but
22 I -- that ECI would develop the software. I'm not
23 sure under what state it would have been provided,
24 and that's a legal question anyway.

25 Q. Okay. But -- So you are aware that

1 Mr. Olita developed the IPCS system as a whole and
2 the specs for the assembled hardware, the ECI
3 software and the ECI database, and then implemented
4 that in the Carrier plant?

5 MR. ESTEP: Object to form.

6 Q. (BY MR. GIBSON) Is that your -- I'm just
7 trying to see what your understanding is.

8 A. Sure. My understanding is that I don't
9 believe --

10 Q. In 1992.

11 A. Sure.

12 Q. In the DOS days.

13 A. My understanding is that Carrier doesn't
14 believe it's the IPCS system that they received, but
15 Mr. Olita definitely implemented the ECI software in
16 1992.

17 Q. And developed the plans for the hardware
18 even though Carrier purchased the actual hardware
19 itself --

20 A. I personally don't have knowledge of --

21 Q. -- assembled hardware?

22 A. -- of who developed what, but my
23 understanding is that that was installed.

24 Q. Now you saw those -- Did you see those big
25 plans at the hearing, the big books of the plans for

1 the hardware that we've put into evidence at the
2 hearing and preliminary injunction?

3 A. I was only there for the first day, so I
4 may not.

5 Q. That's why I asked that.

6 A. Yeah.

7 Q. But, anyway, the plans for the assembled
8 hardware are fairly extensive.

9 Would that surprise you?

10 A. No, that would not surprise me.

11 Q. And if those plans were designed by ECI, do
12 you know anything differently from that?

13 A. I don't know anything differently from
14 that.

15 Q. Now, moving forward. When Carrier changed
16 from the ECI software, or DOS, to the ECI software
17 for WINDOWS XP --

18 A. Uh-huh.

19 Q. -- whenever that was, 2002 or 2004, do you
20 know whether or not Mr. Olita created the upgraded
21 software at ECI and then implemented it in the
22 Carrier plant?

23 A. I mean, that's my understanding that --
24 that Mr. Olita and his company developed the VB6
25 source code.

1 Q. Okay. So we were back a moment ago, before
2 we got into this back-and-forth discussion about
3 whether ECI developed the software or whether
4 Mr. Rindin and some group developed the software,
5 what did you mean by that?

6 A. My confusion is that I believe you were
7 asking about the valid tests and the data in the
8 database. And I believe the data that went into the
9 database was developed jointly or was decided by
10 Carrier's needs as a business, dictated by how they
11 needed to test their air conditioning units,
12 developed in conjunction with ECIMOS, or ECI.

13 Q. So the valid tests weren't developed by --
14 as far as you know, the valid tests weren't
15 developed by ECI and then implemented --

16 A. Perhaps I --

17 Q. -- in the Carrier plant?

18 A. -- misspoke there. So the valid tests I
19 believe are the single unit --

20 Q. The 267 valid tests.

21 A. I'm talking about the scripts --

22 Q. The script --

23 A. -- the actual -- the ordering of the
24 scripts and what was to be tested.

25 But it's also my understanding that Carrier

1 probably knew what they needed to test on the units.

2 But I don't know that for sure, so I'm going to --

3 I'm going to say I'd be guessing on that.

4 Q. Okay. Now, one other thing on the
5 ownership. And you probably heard my question to
6 Mr. Carr yesterday when he and Mr. Estep were
7 talking about the foundry and the software that he
8 developed for the foundry.

9 A. Uh-huh.

10 Q. And Mr. Estep asked him -- Mr. Carr --
11 whether the foundry owned that software or whether
12 Mr. Carr's business owned it and simply licensed it
13 to the foundry.

14 Do you remember that?

15 A. Uh-huh.

16 Q. Okay. And you remember my hypotheticals to
17 Mr. Carr that once the foundry owned the software,
18 would it have been appropriate for Mr. Carr to have
19 then taken that software and implemented it in a
20 competing foundry?

21 A. No.

22 Q. That would not have been; right?

23 A. No, that would not have been appropriate.

24 Q. Okay. Are you aware that the IPCS system,
25 meaning, the ECI software, the ECI-developed

1 database, and the assembled hardware that the ECI
2 drawings are designed for, are in multiple large
3 HVAC companies that compete directly with Carrier?

4 MR. ESTEP: Object to form.

5 Go ahead.

6 A. I am aware that there are VB6 code bases
7 that are running from ECIMOS in several other lines,
8 yes.

9 Q. (BY MR. GIBSON) And if you thought you
10 owned the ECI software, "you" being Carrier, and the
11 ECI hardware design and the ECI database and you're
12 Carrier, would you object to ECI or now ECIMOS
13 having those same systems running in Nortec, at
14 Johnson Controls, Rheem --

15 MR. ESTEP: Object to form.

16 Q. (BY MR. GIBSON) -- York or whatever they're
17 called now?

18 MR. GIBSON: York is Johnson Controls,
19 though; right?

20 Q. (BY MR. GIBSON) Okay, York, Johnson
21 Controls?

22 A. So it's my understanding that the source
23 code was customized at each of those locations with
24 different executables to meet the needs of each
25 individual plant. So the version of the code that

1 would be running at Carrier likely would not do what
2 the other companies need it to do.

3 It's my understanding that Carrier thought
4 it owned what it was running at the plant, but not
5 necessarily something that they would be able to
6 take anywhere else.

7 Q. So if they own the expression, if you will,
8 from the copyright law of the trade secret to the
9 IPCS systems design --

10 A. Now I'm not talking IPCS. So I've seen the
11 IPCS --

12 Q. I'm talking --

13 A. -- and I don't think that's what --

14 Q. When I say "IPCS" and then we have a little
15 back-and-forth about that, I know. But when I say
16 "the IPCS," it's all over the place. But when I say
17 the "IPCS system" --

18 A. Uh-huh.

19 Q. -- it's easier to say that, I'm talking
20 about the ECI software --

21 A. Sure.

22 Q. -- the ECI database, and the ECI drawings
23 for the assembled hardware --

24 MR. ESTEP: I want to object to form.

25 Go ahead.

1 Q. (BY MR. GIBSON) -- that interfaces with the
2 ECI software and the ECI database. Okay?

3 A. Okay.

4 Q. All right. Now, if those same designs --
5 Obviously we've got different models, of course.

6 A. Right.

7 Q. But if those same designs are being
8 implemented at Nortec, York slash Johnson Controls,
9 Rheem, a number of others, would that be infringing
10 on Carrier's ownership of the intellectual property?

11 MR. ESTEP: Object to form.

12 A. I think that's a legal question. But I
13 would say that from my experience it's not
14 appropriate to use someone else's intellectual
15 property.

16 What I will say is that by the time it
17 makes it to my desk things have not been done
18 properly on one side or both sides. So in the --

19 Q. (BY MR. GIBSON) We'll --

20 A. -- foundry example --

21 Q. We'll concede that.

22 A. -- it sounds like everything was done
23 properly and there was an appropriate agreement in
24 place. Most of the stuff that comes to my desk
25 something was done wrong and there's a disagreement

1 because something was not done in the way that it
2 would normally be done.

3 So I could say that Carrier may not have
4 even considered the ownership issue until there was
5 litigation and then they went to go find out, well,
6 who actually owns this code, and then they would
7 make decisions based on that.

8 Q. Should they have considered the
9 intellectual property before they hired Amtec?

10 MR. ESTEP: Object to form.

11 A. I don't know what they did consider, but I
12 certainly think they should have.

13 Q. (BY MR. GIBSON) And back to my original
14 question regarding Exhibit 124.

15 Does it surprise you that Carrier claims it
16 owns the intellectual property we've been talking
17 about, that being the ECI software, the ECI
18 database, the ECI drawings for the assembled
19 hardware, but yet allowed the implementation in all
20 its competitors -- most of its competitors?

21 A. No, it doesn't surprise me, because of what
22 I just said. I said once you get litigation you
23 want to try and figure out what's actually going on,
24 what are the real facts going on. They may have
25 believed that to be in effect up until that point.

1 And then once you get to a lawsuit you have to
2 figure out, well, hey, actually, according to these
3 agreements, we may actually own this software. So
4 they may not have taken any steps to protect their
5 intellectual property before, if it is theirs.

6 Again, these are things to be decided by
7 triers of fact and not myself. I was asked to
8 search for evidence of copying and filter out things
9 that are not usually deemed protectable expression.

10 Q. Now, I think I've beat that dead horse.

11 A. Okay.

12 Q. So let's just move on.

13 THE WITNESS: Dead and dead.

14 You want to take a break now, before we get
15 to the next one?

16 MR. GIBSON: Is that good? You want to?

17 THE WITNESS: I'm fine. But it might be
18 good for everybody else.

19 MR. GIBSON: As long as there's not a
20 pending question you can --

21 THE WITNESS: Yeah.

22 MR. GIBSON: -- you have the floor on that.

23 (Recess.)

24 Q. (BY MR. GIBSON) All right. Mr. Siegel, I
25 told you we were going to stop beating that dead

1 horse, but I want to go back and get just a couple
2 of questions and revive that dead horse for a
3 minute.

4 One question, you said it would be -- you
5 would expect that the lawyers and the developers
6 would -- might be worried about Exhibit 124.

7 And my question is, do you know the
8 lawyers that were -- do you know any lawyers, have
9 you talked to any lawyers, do you know any lawyers
10 that were involved or have you heard about any
11 lawyers at Carrier that were involved in determining
12 whether the -- there was infringement?

13 MR. ESTEP: You're referring to in-house
14 lawyers at Carrier?

15 Q. (BY MR. GIBSON) In-house, outside, anybody,
16 any lawyer that was asked to make a determination, a
17 legal determination as to whether or not there was
18 infringement.

19 Do you know anything about that?

20 A. I do not know anything about that.

21 Q. And my second question is, do you know who
22 the developers were that might be worried about it?

23 MR. ESTEP: Object to the form.

24 A. I would guess maybe the database
25 developers. I know David -- I believe David Hoal

1 was involved on the database side. Maybe J.C.
2 Stewart. But I don't think he did any programming.

3 I don't really know, is the answer to that
4 question.

5 Q. (BY MR. GIBSON) What about Amtec?

6 A. It's my understanding that Amtec wasn't
7 involved at the time that this was -- this software
8 was installed.

9 Q. Which software?

10 A. The software depicted in Exhibit 124, when
11 it was -- you're talking -- Could you clarify --

12 Q. Well, by "developers," I assume you mean
13 the developers of the RES software. Right?

14 A. Could you clarify the question? I just --

15 Q. Okay, let me go back.

16 I first mentioned the lawyers. And you
17 don't know anything about the -- you don't think you
18 know anything about the lawyers.

19 Okay. Then I jumped to the developers.

20 And I assume by "developers" you meant the
21 developers of the RES software and MES database.

22 Correct?

23 A. That was not what I understood what you had
24 asked.

25 I thought you meant developers at the

1 Carrier facilities, because they do have some folks
2 there that seems to understand databases and manage
3 their databases. And I assume they have some folks
4 there that understand code, but I don't know.

5 I did not take that to mean the Amtec
6 developers, so forgive me. If you want to ask me
7 that again.

8 Q. Okay. So David Hoal, J.C. Stewart.

9 Have you talked to David Hoal?

10 A. I've talked to him very briefly at the
11 preliminary injunction hearing. I believe he was
12 there.

13 Q. Just in the back, sitting back in the back
14 of the courtroom?

15 A. Yes, I believe so.

16 Q. What did you talk to David Hoal about?

17 A. I asked him about the development of the
18 RES database, the database that would support the
19 LabVIEW software, because I had concerns about
20 whether or not it was developed independently or, as
21 is alleged in this matter, whether or not it was
22 derived from the ECI database.

23 Q. Okay. And what did he say?

24 A. He said that it was developed independently
25 by Carrier.

1 Q. By Carrier itself?

2 A. By Carrier. And it's my understanding,
3 from what I've heard the last two days, perhaps with
4 assistance from Amtec.

5 Q. Okay. But other than Amtec and Carrier,
6 are you aware of any other -- any third-party
7 besides Amtec that was involved in the development
8 of the MES database?

9 A. You know, David Hoal may have listed
10 another database administrator or someone along
11 those lines, but I can't remember. He would be
12 better to ask.

13 Q. Boals. Was -- was he talking about Boals,
14 the CSE, the guy from CSE?

15 A. I'm not sure. I'm sorry, I don't remember.

16 Q. Okay. I'm not sure his first name off the
17 top of my head, but he was at the -- he was at the
18 test -- testing.

19 All right. Did you talk to Peter O'Connor?

20 A. No, I don't believe I did.

21 Q. How many times have you talked to J.C.
22 Stewart about this matter?

23 A. Multiple times. I couldn't tell you. I
24 mean, 10, 20.

25 Q. And in your conversations with Mr. Stewart,

1 do you believe Mr. Stewart had any -- any part in
2 the development or programming or migration or
3 whatever of the MES database?

4 A. I'm not sure I understand your question.

5 Q. Do you -- do you believe -- do you know
6 whether Mr. Stewart had any -- did any work on the
7 MES database to get it developed and built?

8 A. I believe Mr. Stewart was involved in the
9 process regarding the development of the LabVIEW
10 software, but not necessarily from the coding
11 standpoint, more from the requirement standpoint.
12 That's my understanding.

13 Q. And what about the MES database?

14 A. So my understanding is that J.C. Stewart
15 would have had input into some of the data that
16 would have been going into that, such as the results
17 that might need to be captured from testing the air
18 conditioning units and, perhaps, the order of the
19 test procedures and things of that nature. That's
20 my understanding.

21 Q. Have you ever seen the Indemnity Agreement
22 that Carrier agreed to with Amtec?

23 A. I'm not sure if I've seen that document.

24 Q. Okay. Would it surprise you to find out
25 that a big 'ole company like Carrier would agree to

1 completely hold Amtec harmless from and indemnify
2 them from any potential litigation that might occur
3 from the development of the RES software and MES
4 database?

5 MR. ESTEP: Object to form.

6 A. I think you're asking me for a legal
7 conclusion.

8 Q. (BY MR. GIBSON) I just said would it
9 surprise you, I'm not -- whether it --

10 A. Would it surprise me that --

11 Q. How strong it is is, you know, a legal --

12 A. Let me repeat. Would it surprise me to
13 hear that Carrier was willing to indemnify Amtec?

14 Q. Correct, for what it did in this case.

15 A. For Amtec's development process?

16 MR. ESTEP: Same objection.

17 Q. (BY MR. GIBSON) Go ahead.

18 A. No, it would not surprise me.

19 Q. Okay. Why?

20 A. Because I'm not a lawyer and I'm not
21 exactly sure how that would normally be written in a
22 contract.

23 Q. Okay. If you were in Amtec's shoes, would
24 you have requested to be protected like that from an
25 indemnity agreement from Carrier when you heard

1 about what was going to be requested in this case to
2 be done?

3 MR. ESTEP: Object to form.

4 A. Honestly, I'm not sure on what Amtec's
5 business processes, either. It could be it's a
6 standard form for Amtec. I haven't seen the
7 document, I don't know.

8 Q. (BY MR. GIBSON) Okay. When did DisputeSoft
9 first get involved in this case, anything to do with
10 this case?

11 A. I'm not sure if I can recall exactly. That
12 would be a better question for Bob and Garrett over
13 here.

14 But it was definitely a few months before
15 the inspection.

16 Q. The first inspection?

17 A. The first inspection. I was present at the
18 first inspection in May.

19 Q. May of 2016?

20 A. 2016, I believe. And it would have been
21 months before that, but I -- I -- I can't recall,
22 I'm sorry.

23 Q. So you're thinking early 2016, maybe?

24 A. Maybe early 2016, maybe late 2015, maybe
25 the summer of 2015. I'm really -- I'm not sure.

1 Q. Were you the first contact from
2 DisputeSoft, as far as you know?

3 A. No, it would have gone through my boss
4 first, Jeff Parmet.

5 Q. So somebody at Carrier called Jeff --

6 A. Parmet, P-A-R-M-E-T.

7 Q. Somebody would have called Jeff Parmet from
8 Carrier, you think -- you believe?

9 A. I believe so. Yeah, I believe Mr. McLean
10 would have called and said I have litigation
11 involving these details, you know, do you have
12 someone at the firm that would be a good fit to help
13 us understand the issues at this case. And I was
14 recommended.

15 Q. And are you the only person that you know
16 of at DisputeSoft that's worked on this case?

17 A. I am the only person that has reviewed any
18 proprietary materials.

19 I did have some assistance reviewing some
20 deposition testimony just to get me some summaries,
21 because I didn't have time, I was out of state.

22 Q. And who did that at Dispute?

23 A. Her name is Ann Ackerman, A-C-K-E-R-M-A-N.

24 Q. But other than helping with deposition
25 summaries, Ms. Ackerman hasn't done any other work

1 on this case?

2 A. No.

3 Q. Now, do you -- Has DisputeSoft ever done
4 any other work for Carrier Corporation?

5 A. Not to my knowledge, no.

6 Q. How about for the Farris Bobango firm?

7 A. Not to my knowledge, no.

8 Q. Now, do you know whether or not Carrier
9 enlisted the help of a third-party when it was
10 making the decision to change from the ECI software
11 to the Amtec RES software?

12 A. I do not have any knowledge about this.

13 Q. I said "Amtec." I didn't mean to say
14 "Amtec." But it's the RES software. 'Cause I know
15 Carrier owns RES software; correct?

16 A. That is my understanding, yes.

17 Q. Now, does DisputeSoft ever get involved --
18 Well, let me back up.

19 You discussed some or gave some opinions in
20 your report about cleanroom. Right?

21 A. Cleanroom design, yes.

22 Q. Have you ever designed a cleanroom before
23 the implementation of the development of a software
24 package to prevent it from being -- infringing on a
25 different software package?

1 A. I personally have never designed a
2 cleanroom, but I have provided opinions and analysis
3 regarding cleanroom design.

4 And I would like to state my definition is
5 a different definition than the cleanroom
6 development definition that was used yesterday.

7 Q. Okay. Now, so how many times -- so every
8 time you've been involved in making -- giving an
9 opinion about cleanroom or involved in a cleanroom
10 design in any way is after the fact, so to speak.

11 Is that -- is that fair to say?

12 A. That is fair to say, we have not been
13 engaged prior to a litigation involving that
14 particular issue.

15 Q. Like you said, most of the time you get
16 involved after there's a problem?

17 A. Most of the time we get involved after
18 there's a problem. Sometimes we do get
19 pre-litigation assessments, which can help avoid
20 litigation sometimes. It has in the past. But that
21 is not as common. Normally we get calls from
22 attorneys because something is going on, not because
23 something might happen.

24 Q. All right. Well, since we're on cleanroom,
25 let's go ahead and look at your report.

1 (WHEREUPON DOCUMENT WAS MARKED as Exhibit
2 125 to the testimony of the witness.)

3 Q. (BY MR. GIBSON) And I believe it starts on
4 page 15.

5 A. Okay.

6 Q. Is that right?

7 A. Sure.

8 Q. First of all, if there were no cleanroom
9 here, based upon your definition or some other
10 definition, but based upon your definition if there
11 were no cleanroom here, would that mean there were
12 possible infringement?

13 A. May I provide my definition before I answer
14 that question?

15 Q. Sure. Sure. Sure. You can answer it
16 however you can.

17 A. Sure.

18 So cleanroom design, in my opinion and in
19 my research, is different from cleanroom development
20 that was defined yesterday.

21 Cleanroom development defined yesterday,
22 the goal is to deliver a defect-free product. That
23 is not what I was talking about in my report. The
24 definition I'm using is more closely related to
25 copyrights and intellectual property. And it's more

1 of a set of guidelines to follow, things that you
2 can do in order to potentially avoid litigation and
3 accidentally misappropriating trade secrets or other
4 intellectual property.

5 Sometimes it's called a "Chinese wall." A
6 lot of times it's about segregating different
7 people, segregating knowledge so that you can
8 develop a product without making those mistakes.

9 Q. All right. Now, how do you design it?

10 A. How do you design the cleanroom.

11 The cleanroom design --

12 Q. In the context of preventing litigation.

13 A. Right. So, again, I said it's more of a
14 set of guidelines of what you would want to do.

15 One of the steps that's normally taken is
16 hiring an outside third-party consultant without
17 knowledge of the prior IP. That's something that
18 Carrier did in this matter, which is an adherence of
19 cleanroom design.

20 Now normally you would not want to send
21 anything regarding that previous knowledge. And I
22 will say that I believe Carrier made a mistake in
23 that in regard in EC10082.xls spreadsheet.

24 But, like I said, these -- these matters
25 don't generally come to my desk unless there's an

1 issue in the case. And if things were done
2 perfectly I wouldn't be here.

3 Q. Okay. Now, let me look -- get you to take
4 a look at Exhibit 125. And this is the report that
5 you reference in your footnote --

6 A. Yes.

7 Q. -- nine that carries --

8 A. It's the entire --

9 Q. It's on page 15 and carries over to page
10 16. And I'm just going to say what it is, and then
11 you tell me if that's what it is.

12 It says -- your note talks about the idea
13 of cleanroom development, and, in this case, design.
14 And it says, "As a means of protection against
15 copyright infringement." And it was introduced in
16 the NEC versus Intel case.

17 It says, the final sentence there, is, "In
18 order to ensure there would be no prior knowledge of
19 the registered work NEC hired an independent
20 engineer to develop code in order to maintain their
21 cleanroom." And it's from the Harvard Journal of
22 Law and Technology, Volume III, Spring Issue, 1990.

23 Is that what you cited in your report?

24 A. That is my citation, yes.

25 Q. And is that a copy of that document that

1 you were citing?

2 MR. GIBSON: Hey, I've got an extra copy
3 for you since it's --

4 (Document was passed.)

5 Q. (BY MR. GIBSON) Does that appear to be a
6 copy of it?

7 A. Let me check.

8 This appears to be it, yes.

9 Q. Okay. In the title of the 14-page law
10 review article or similar law review article there
11 is from NEC, it's titled NEC v. Intel: Breaking New
12 Ground in the Law of Copyright.

13 So Exhibit 125 is that article?

14 A. It appears to be, yes.

15 Q. Okay. Now if you'll flip over to page
16 219 --

17 A. 219.

18 Q. -- of that document.

19 A. Okay.

20 Q. It says -- it says, "Yet SOP cleanrooms
21 would be"... And by "SOP" he means -- they mean
22 standard operating procedure up at the top there.

23 Do you see where SOP as defined as
24 entered --

25 A. I see it.

1 Q. All right. I'm going to back up and say it
2 again.

3 "Yet SOP cleanrooms would be a major burden
4 on the software industry. Most hard felt will be
5 the recordkeeping burden. In NEC v. Intel the
6 cleanroom documentation was 'many thousands of
7 pages' long." And many thousands of pages is in
8 quotes. "It included every single piece of paper
9 which Mr. Davidian saw."

10 I assume Mr. Davidian is similar Ms. Davis
11 here. Would that be fair to say?

12 MR. ESTEP: Object to form.

13 Q. (BY MR. GIBSON) But go ahead. Well, you
14 didn't answer.

15 A. I would say so.

16 Q. Okay. "Plus, records of all his written
17 and electronic communications. Such completeness
18 demands a large investment of time and resources."

19 So, first of all, do you know how much
20 Carrier spent on this alleged cleanroom that you're
21 talking about here?

22 A. Again, I'm alleging that they followed the
23 principles of cleanroom design, not that they
24 implemented a cleanroom. I believe that's what my
25 opinion states.

1 Q. So you haven't seen many thousands of pages
2 of documents going back and forth about how they
3 maintain their cleanroom?

4 A. My point here was simply that they were
5 following the principles of cleanroom design in
6 that, like as my citation says on page 213, that the
7 developer did not have access to the source code of
8 the other product.

9 Q. Well, just answer my question first, and
10 then we can get --

11 A. Sure.

12 Q. -- to the source code. I know -- I know
13 where you're going, but I'm trying to make sure I
14 understand what you're talking about. And right now
15 we're going to kind of go from the broad to the
16 specific, although sometimes I'll get into what
17 actually happened here when I'm talking about what a
18 cleanroom design really is. And then we can get
19 into whether the source code was copied or not. I
20 mean, 'cause that's -- obviously we're going to talk
21 about that. Okay?

22 A. Okay.

23 Q. All right. Now, how much did -- so you
24 don't know how much -- you don't know how much, if
25 anything, Carrier spent on a cleanroom design?

1 A. I have no idea on that.

2 Q. Okay. And you don't know -- you haven't
3 seen a single piece of paper that talks about what
4 they did to maintain a cleanroom design; is that
5 correct?

6 A. I have not seen anything along those lines.

7 Q. Now, if you'll look at the next paragraph
8 on that same page, it says, "The manpower burden is
9 also quite large," period. "Cleanrooms require at
10 least three groups of people: A specification team,
11 a design team, and a coordination team."

12 Now, I assume here that the design team is
13 what you're talking about Amtec was. Right?

14 A. I would think --

15 MR. ESTEP: Object to form.

16 A. Yeah, I would think that that was the
17 development team. I believe the design would have
18 been done by Mr. Stewart, who had knowledge of the
19 requirements of Carrier's business.

20 But, again, this seems to be referring to
21 an SOP cleanroom, and I'm only talking about
22 elements of cleanroom design. I'm not alleging that
23 Carrier set up a cleanroom.

24 Q. (BY MR. GIBSON) Okay. Well, does the fact
25 that they didn't set up a cleanroom mean that they

1 infringed on software?

2 A. No.

3 Q. Okay. Well, isn't it software infringement
4 just by the mere fact that Paula Davis received
5 documents that were from the ECI software database?

6 A. It's my understanding that's a legal
7 conclusion whether or not that's infringement. But
8 evidence of copying does not necessarily mean that
9 anything was infringed. That's the whole point of
10 the filtration step of the abstraction-filtration-
11 comparison is you filter out nonprotectable
12 elements. And you also filter out elements that
13 would not receive protection due to either ownership
14 or third-party or open source or automatically
15 generated code, generally doesn't receive
16 protection.

17 Q. Well, I can infringe on your software by
18 just stealing your manual on the software and
19 creating my own based on what's in the manual, if
20 it's got enough documentation in it. Right?

21 A. To my understanding, that wouldn't
22 necessarily be infringement on software. You would
23 probably -- Actually, even if you didn't copy the
24 manual itself, I'm not sure if that would be
25 infringement on the manual.

1 But, again, I believe that's a legal
2 question, and I'm not giving any legal opinions. I
3 want to make that very clear, it's only my
4 understanding of the law.

5 Q. Well, since you're defining cleanroom here
6 and you're talking about cleanroom here, I'm trying
7 to figure out why you brought it up if Carrier
8 didn't actually implement a cleanroom.

9 A. I'm bringing it up because generally there
10 are elements of a cleanroom design process that help
11 protect from infringing upon IP. And I'm saying
12 that Carrier took some of those steps in good faith
13 in order to not infringe, potentially, on this IP
14 because there's a notice on there and it's unclear
15 as to who owns the code. So I would imagine that
16 Carrier would want to make sure that they are not
17 going to be using any of that material.

18 Q. Which brings up another point. I mentioned
19 Exhibit 123 having the ECI message on there that
20 it's ECI's work intellectual property and don't
21 infringe on it, basically. I'm paraphrasing, but
22 whatever Exhibit 123 says.

23 I also mention that some very, very big
24 competitors of Carrier have the same or similar
25 system in their facilities.

1 That's another question. If you thought
2 you owned the software, why are you hiring Amtec?
3 Why don't you just copy it?

4 A. I believe, again, that there are issues,
5 because there's a litigation going on, so it's
6 unclear.

7 It's also, you know, based on that screen
8 alone, it's not clear what the terms of that license
9 are on whether or not Carrier is permitted to use
10 and modify or what -- what they're allowed to do.
11 It's just a reference to another document. And,
12 again, that would require a legal conclusion.

13 Q. Now the litigation ensued after Amtec was
14 hired; right?

15 A. I believe so, yes.

16 Q. Now, so when I'm -- if I'm understanding
17 your testimony, Carrier implemented some of what you
18 would recommend as a design of a cleanroom but did
19 not implement all of what they should have for a
20 good, proper cleanroom design.

21 Is that fair to say?

22 A. That is fair to say.

23 Q. Yeah. Now, speaking of cleanroom. You
24 said Carrier made a mistake in sending the
25 spreadsheet, the 1500 pages and all that, the

1 spreadsheet we talked about so much yesterday.

2 MR. ESTEP: Object to form. I think y'all
3 need to clarify that.

4 MR. GIBSON: Okay.

5 Q. (BY MR. GIBSON) You -- Am I understanding
6 your testimony correctly, you said that Carrier made
7 a mistake in sending the spreadsheet to Ms. Davis?

8 Is that right?

9 A. That is correct.

10 Q. Okay. Now, did Carrier make any other
11 mistakes, to your knowledge?

12 A. To my knowledge, that's the one that I know
13 about, so I don't know about any others at this
14 time.

15 Q. Okay. Have you looked at the drive that
16 was -- that Mr. Stewart gave to Mr. Fleming, who
17 ultimately gave that to Ms. Davis? Have you looked
18 at that drive?

19 A. I'm not sure what you're talking about.

20 Q. Okay, you don't know anything about it.

21 Have you -- Well, we don't have a
22 transcript of Ms. Davis's testimony that was taken
23 in Huntsville.

24 You were not present in her deposition;
25 correct?

1 A. I was not present at her deposition.

2 Q. Has anybody talked to you at all about what
3 she said in that deposition, anybody talked about
4 their notes from it or any kind of -- anything
5 relating to her testimony?

6 A. I've mostly only heard what was said in the
7 room in the past two days, I don't really know much
8 about it.

9 Q. Okay. Would it surprise you that in,
10 roughly, a year's time between when Amtec got
11 involved in the mockup of the RES software and -- in
12 the fall of 2014 and it was implemented in the
13 Carrier plant in the fall of 2015, so about a year,
14 would it surprise you that there are 1005 -- at
15 least 1005 emails between Ms. Davis and Mr. Stewart
16 alone?

17 A. Would it surprise me that --

18 Q. Yes.

19 A. -- there are 1005 emails? No.

20 Q. Okay. So almost an average of three emails
21 a day between the two of them; correct? I mean, my
22 math, roughly?

23 A. Yeah, I'm sure.

24 Q. That's a lot of -- That's certainly not a
25 cleanroom; right?

1 A. I wouldn't say that. Mr. Stewart is
2 providing the specifications for the design of the
3 software and then the third-party should be using
4 what Mr. Stewart's dictating in order to actually
5 develop the software, again, without having seen any
6 of the prior software. It's my understanding in
7 this case that Amtec never had access to any of
8 Visual Basic 6 source code.

9 MR. GIBSON: I know. I know. Don't --
10 don't worry, we're -- we're getting there. Settle
11 down, guys. Settle down.

12 Q. (BY MR. GIBSON) Now, you already know about
13 what I'm going to ask. Everybody knows what
14 everybody's going to ask.

15 Okay. Now, but back to page 219. It's
16 still in front you.

17 A. I'm still on page 219.

18 Q. You see there -- And I'm talking about
19 proper cleanroom being implemented here. I
20 understand what your testimony is, so I'm -- it's
21 cutting back, way back, on my cleanroom questions.
22 Okay?

23 But on page 219 it says, "Cleanrooms
24 require at least three groups of people: A
25 specification team, a design team, and a

1 coordination team."

2 Just in general, not talking about this
3 case, do you pretty much agree with that statement?
4 I mean, you've cited this authoritative work.

5 A. Yes, I agree with that statement.

6 Q. Now, the coordination team I assume is the
7 go-between between the specification team and the
8 design team. That's what I would figure that is.

9 Does that sound fair to say?

10 A. Let me read this for a second.

11 Q. Okay.

12 A. Yes, again, my citation was to page 213
13 regarding with access to source code.

14 From context, I would expect that was what
15 it means.

16 Q. Okay. So my understanding would be to
17 prevent too much contact between the specification
18 team and the design team you have this coordination
19 team to make sure that intellectual property is not
20 given to the design team that shouldn't be given to
21 the design team.

22 Is that fair to say?

23 A. I think that's fair to say.

24 Q. So shouldn't there have been a go-between
25 between Mr. Stewart and Ms. Davis if we -- if you

1 were designing the team before Ms. Davis got
2 involved?

3 A. According to this definition of a standard
4 cleanroom design, I would say yes. Again, my report
5 is only an opinion that they followed some of the
6 principles of cleanroom design.

7 Q. Okay. All right. Now, you mentioned one
8 of the mistakes was the email about the spreadsheet.

9 Let me ask you about another, whether this
10 other document given to Ms. Davis was a mistake.

11 (Off-the-record discussion.)

12 MR. GIBSON: I'm just going to show this to
13 you. And, then, since it's Exhibit 103 -- it's
14 Exhibit 103, I've written Exhibit 103 on there.

15 Can we just -- should I -- should we make
16 it a new exhibit or just say we're referring to 103?

17 MR. ESTEP: I thought the purpose with
18 consecutive numbering was not to make new exhibits,
19 if it --

20 MR. GIBSON: Right.

21 MR. ESTEP: -- could be avoided.

22 MR. GIBSON: Is that okay?

23 MR. ESTEP: Yeah.

24 MR. GIBSON: My -- just the way I've got
25 it? Okay.

1 Q. (BY MR. GIBSON) I'm showing you what's
2 previously been marked as Exhibit 103. This is my
3 handwriting, but this is what we marked in
4 Ms. Davis's.

5 MR. MCLEAN: Just a second, Ralph. Let us
6 take a look at it.

7 MR. GIBSON: That may be two copies.

8 MR. ESTEP: I was going to say, it looks
9 awful thick.

10 MR. GIBSON: Yeah.

11 MR. ESTEP: And it is two copies.

12 MR. GIBSON: Give me one back.

13 THE WITNESS: Did you want this exhibit
14 back, 125?

15 (Off-the-record discussion.)

16 Q. (BY MR. GIBSON) So let's make sure. Can
17 you look -- does it have C030177 through the last
18 page being C030200 on it?

19 A. Yes.

20 Q. Okay, we're looking at the same document.
21 Now, you heard Mr. Carr's testimony on this
22 document yesterday; correct?

23 A. I did hear his testimony.

24 Q. Would the attachments to this document have
25 also been a mistake being sent to Ms. Davis?

1 A. This is -- I mean, I've only seen this
2 document just now, I'm not sure what --

3 Q. Take your time.

4 A. -- you're talking about.

5 Q. Look at it. Take your time.

6 A. What is the origin of this document?

7 Q. Well, according to Mr. Carr's testimony
8 yesterday, and what the testimony will come out, it
9 came from the ECI database.

10 A. This document?

11 Q. Well, the appendix to this document, I'm
12 sorry. Not the plan itself, the appendices. There
13 are ten of them, I believe, or more. No, eight.

14 (The witness reviewed the document).

15 Q. Okay. Just -- just so you'll know where it
16 came from, it's an email that came from -- it
17 came -- it was given to Ms. Davis by Mr. Stewart.

18 A. This document --

19 Q. Yes.

20 A. -- was provided --

21 Q. To Ms. Davis.

22 A. -- to Paula Davis?

23 MR. ESTEP: Object to form.

24 Q. (BY MR. GIBSON) In the -- in the beginning
25 stages of the development of the RES.

1 MR. ESTEP: Same objection.

2 Q. (BY MR. GIBSON) I'm just -- just -- You
3 asked where it came from, I'm just telling you.

4 A. (Witness nods head up and down.)

5 Q. Okay. And we discussed it in this -- the
6 103, it was first authenticated in Ms. Davis's
7 deposition.

8 MR. ESTEP: Object to form.

9 MR. GIBSON: But she did authenticate it, I
10 think.

11 MR. ESTEP: I mean, we may have a
12 disagreement about that. But --

13 MR. MCLEAN: No.

14 MR. ESTEP: -- until we see her
15 transcript --

16 MR. GIBSON: Okay.

17 MR. ESTEP: -- we'll find out.

18 MR. GIBSON: Okay. At least talked about
19 it in there.

20 MR. ESTEP: It was discussed. I agree with
21 that.

22 MR. GIBSON: And at the bottom those are
23 Carrier Bates stamps, so it came from Carrier.

24 MR. ESTEP: The document does have a
25 Carrier Bates stamp nomenclature. And we agree to

1 that.

2 (The witness reviewed the document.)

3 A. So I misspoke. We did actually look at
4 this a little bit last night, and I asked J.C. where
5 this came from and where this went. And he informed
6 me -- Sorry, I thought this was a different
7 document. He informed me that this went to Carrier
8 management, but that he testified that he did not --
9 didn't testify -- he told me that he did not
10 actually send this to Ms. Davis.

11 Now I don't know, I assume he'll speak more
12 to that later, but that's my current understanding.
13 So my answers will be based on that understanding.

14 My apologies, I thought this was a
15 different document.

16 Q. (BY MR. GIBSON) Oh, okay. So you believe
17 that this was actually not given to Ms. Davis
18 notwithstanding whatever she said in her deposition?

19 A. I haven't seen her deposition, so I don't
20 know what she said. But it's my understanding this
21 was provided to Carrier management. I do not know
22 if Carrier management passed that on anywhere else,
23 so.

24 Q. Since that's what you're now aware of,
25 okay, let me just ask you just hypothetically.

1 We'll deal with whether Ms. Davis got it or not --

2 A. Okay.

3 Q. -- later.

4 Hypothetically, if she received this
5 document, would that have also been a mistake?

6 A. I would say yes. But mainly because some
7 of the names that would be stored in the results
8 table would be exposed.

9 Now a lot of those names I would expect to
10 see just by the needs of Carrier's business to test
11 their units. And a lot of terms don't appear to be
12 that original, they do appear to be terms of art.
13 But I would not say that this should go to the
14 developer.

15 Q. Okay. And you've mentioned two mistakes.
16 I don't see either mistake in your report.

17 Is that because since you've drafted that
18 report you've learned of these mistakes?

19 A. So of the --

20 Q. And that's a hypothetical mistake.

21 A. Uh-huh.

22 Q. But assuming it's a mistake, you've
23 mentioned the one mistake and then now we've talked
24 about a potential mistake.

25 MR. ESTEP: I'm going to object to the

1 form. I'm not clear upon what the second mistake
2 is.

3 MR. GIBSON: The -- Well, I'm going to ask
4 a hypothetical and assume that's a mistake in a
5 second.

6 Q. (BY MR. GIBSON) But let me just ask you.
7 Were you aware of any mistakes, alleged or not
8 alleged, when you wrote your report?

9 A. So the only mistake I was referencing was
10 in to maintaining proper cleanroom design you should
11 not be sending any information that I'm, you know,
12 aware of that might be from the other system to the
13 developer.

14 Q. But my --

15 A. The contents of that --

16 Q. Go ahead.

17 A. -- might or might not be protectable
18 expression.

19 Q. But my question about that is I don't see
20 that anywhere in your report, so I'm assuming you
21 learned about the first mistake you mentioned after
22 you drafted your report.

23 A. That's correct.

24 Q. Okay.

25 A. I -- I knew that it was used as the basis

1 for Mr. Chenault's analysis and my rebuttal.

2 Q. Does it change your opinion about -- at all
3 in this case now that you've learned that that was
4 sent to Ms. Davis as a mistake?

5 A. Which that are we talking about?

6 Q. That for your first mistake, the
7 spreadsheet.

8 A. The spreadsheet?

9 Q. Yeah. Yes.

10 A. That does not change my opinion.

11 Q. Okay. What about hypothetically with your
12 first mistake and then what I allege to be the
13 second mistake, if the second mistake was also sent
14 to Ms. Davis, would that change your opinion?

15 A. No, I don't believe it would.

16 Q. Okay. Let's look at a potential third
17 mistake.

18 This is Exhibit 104, I'm going to represent
19 to you. And it's Carrier number C030116 through
20 C030127. Make sure I've got the same. I'm going to
21 make sure there are no notes on there.

22 (Document was passed.)

23 Q. All right, that is the -- it doesn't have
24 the exhibit number on there, I guess 'cause we don't
25 have it yet. But that, I'm going to represent to

1 you, is Exhibit 104 to Ms. Davis's deposition.

2 A. Okay.

3 Q. I'm also going to represent to you that
4 she's the one that drafted that document or put it
5 together.

6 A. Okay.

7 Q. Okay? So if you'll look at the second page
8 of that document.

9 A. Is that C030117?

10 Q. Yes.

11 A. Okay.

12 Q. In the middle of that it talks about
13 overall system design to include architecture to
14 support the existing 100 plus test sets,
15 architecture to support the existing 30 plus model
16 families with 750 plus models, and architecture to
17 support the existing 350 plus sets of test
18 procedures.

19 Do you know where the test sets, model
20 families and test procedures came from?

21 A. I would imagine that the 30 plus model
22 families would refer to Carrier models and Carrier
23 model families of air conditioning units.

24 The -- not sure from the context what the
25 hundred plus test sets are. But I would assume, the

1 context, they're sets of tests that Carrier needs to
2 run on their air conditioning units for quality
3 control.

4 And then support existing 350 sets of test
5 procedures, I would assume that's the 350 test
6 procedures that Carrier must run on its units for
7 qualify control, based on the context of this. But
8 this is the first time I've seen this document.

9 Q. Now, under the overall system design, are
10 you aware that there are 103 test stations at
11 Carrier?

12 A. Thereabouts. That sounds about right, if
13 you're talking about the work stations.

14 Q. And you've heard all the testimony going
15 back and forth and looked at -- are you generally
16 aware that the hardware has not changed much, if at
17 all --

18 MR. ESTEP: Object to form.

19 Q. (BY MR. GIBSON) -- since --

20 A. It's my understanding that there's been a
21 lot of rewiring done in the hardware in order to
22 support a different software package. That's from
23 conversations with J.C. Stewart.

24 Q. Okay, there was rewiring done before the
25 RES software was implemented?

1 A. I believe there was some done before it was
2 implemented, I believe there was some done after it
3 was implemented. I believe it was a constant
4 improvement process. But, again, that's my
5 understanding from J.C., he'll correct that.

6 Q. And I'm much more concerned about right
7 before RES software was implemented, what it's like
8 today.

9 But all of that came from J.C. Stewart,
10 correct, what you just testified to?

11 A. That understanding came from J.C. Stewart.

12 Q. Yeah.

13 Do you know where test procedures that were
14 mentioned there came from?

15 A. In this proposal?

16 Q. Yes.

17 A. I am not sure where the test procedures
18 would come from in this -- in this proposal.

19 Q. Okay. You testified earlier it was your
20 understanding, you were here yesterday when -- Well,
21 first of all, back up.

22 You were here yesterday when Mr. Carr
23 testified that 21 of the 28 stored procedures were
24 drafted at least by or authored at least by -- by
25 Ms. Davis; correct?

1 A. I was here for that, yes.

2 Q. Okay. So that was after -- that would have
3 been -- since she got in in the fall of 2014, that
4 would have been after this document was drafted.

5 Does that sound fair to say?

6 A. I would imagine, yes.

7 Q. So the MES database would have also been
8 implemented and the RES software implemented after
9 this document was drafted?

10 A. I'm not sure.

11 Q. I'm asking -- I'm sorry, I'm asking a
12 rhetorical question, let me ask it better.

13 Obviously the RES software and the MES
14 database were designed, developed and implemented
15 after this document was drafted.

16 MR. ESTEP: Object to form.

17 But you may answer.

18 A. I would assume so, based on the name of
19 this document.

20 Q. (BY MR. GIBSON) Okay. Now -- so does that
21 mean that these 350 test procedures that she's
22 talking about here came from the ECI database?

23 A. I would not assume that, no.

24 Q. Where could they have come from?

25 A. I assume that Carrier needs to conduct

1 certain tests on their units.

2 I was provided, I would say last week, from
3 counsel with an engineering document that specifies
4 some of the tests that Carrier must run. Now I'm
5 not an electrical engineer, so I just recognize a
6 lot of the terms that are used are similar terms of
7 art. And it's my understanding from Carrier that
8 Carrier has certain tests they have to run, so I
9 would imagine that's where these came from.

10 Q. Okay. And those tests are generally tests
11 that are run by -- according to specifications
12 within the HVAC industry; correct?

13 A. Within the HVAC industry or within
14 Carrier's particular needs for particular models. I
15 would imagine there would be different tests for
16 different units.

17 Q. Okay. Well, did you hear Mr. Carr's
18 testimony that they came from the ECI database?

19 A. I did hear his testimony, yes.

20 Q. Okay. And my question is, where else could
21 they have come from?

22 A. Well, it's my understanding Mister --

23 Q. If there's -- at this point there's no MES
24 database; correct?

25 A. It's my understanding the MES database does

1 not exist as of the time of this document.

2 Q. So --

3 A. Well, actually --

4 Q. -- I'm not aware of -- I'm aware of two
5 databases that we've talked about a million times in
6 this case: The MES database and the ECI database.

7 Were you aware of a third database
8 somewhere?

9 A. No.

10 Q. Okay. So Ms. Davis has to be talking about
11 the ECI database here; correct?

12 A. Why?

13 Q. Well, where else could they come from?

14 A. Carrier's requirements. These are
15 Carrier's requirements to quality assure their air
16 conditioning units. They have to test that these
17 fans will turn on, they will operate within certain
18 voltages and temperatures. That's my understanding.

19 Q. Well, it says existing, they exist.

20 A. They do. Carrier --

21 Q. Okay. Well, is it -- is it a mistake --

22 A. Some employee is going to go and test their
23 various voltages. I saw it happening when I was at
24 the plant.

25 Q. We're talking about the architecture to

1 support the existing 100 plus test sets and the 350
2 plus test procedures; right?

3 A. Maybe I'm confused.

4 Q. She's getting this architecture -- I mean,
5 she's getting these tests from the ECI database;
6 correct?

7 MR. ESTEP: Object to form.

8 A. I'm -- I'm confused by your questions.

9 Q. (BY MR. GIBSON) If she were given these
10 specifications, would that be a mistake? The
11 specifications for these existing sets, test sets
12 and test procedures.

13 A. I don't believe so.

14 Q. Okay. Now, if you'll look at the next
15 page.

16 Now, you've mentioned -- I'm going to
17 jump -- jump to a point in your -- you can look at
18 it, if you want to, but I'm going to jump to a
19 question from your...

20 All right. This is, basically, your
21 summary of opinions, your ninth paragraph on page 7.
22 So if you want to jump back -- back there on your
23 opinion --

24 A. Okay.

25 Q. -- on your opinions in your report. And

1 you testified to this earlier and -- but I see right
2 there in the middle, it says, that sentence right
3 there in the middle says, "The structure" -- Right
4 in the middle of paragraph nine. "The structure
5 sequence and organization of the RES database is
6 different from the ECI database."

7 But isn't the most important thing the
8 data?

9 A. For a copyright infringement claim?

10 Q. Yeah.

11 A. The structure sequence and organization is
12 the basis for teeing up the legal arguments that
13 something is substantially similar. That's my
14 understanding.

15 Q. Well, you heard Mister --

16 A. The data is not the structure sequence and
17 organization.

18 Q. What about the stored test procedures and
19 the stored valid tests?

20 A. It's my understanding that -- Let me back
21 up.

22 I was provided the ECI database scripts,
23 which generate the structure sequence and
24 organization. It's an empty database shell. It is
25 my understanding that that is what was registered

1 with the Copyright Office, and the way that that
2 data is organized would be protected.

3 The data that goes in the database, it's my
4 understanding that was populated by the use of the
5 software. So -- so, no, I don't believe that data
6 would be.

7 Q. Now, the software calls the valid test and
8 test procedures from the database; correct?

9 A. The software -- The software is used to
10 populate that data and then it uses the data that
11 has been populated in order to run and execute.

12 Q. But to populate that data it gets it from
13 the database?

14 A. Right. But at install there wouldn't be
15 any data in there.

16 Q. But you don't know whether it's the same
17 stored procedures --

18 A. So now --

19 Q. -- or not?

20 A. -- when you say -- Sorry, I'm talking over.

21 Q. Okay, go ahead.

22 A. When you say "stored procedure," I take
23 that to mean in the relational database sense, which
24 is a defined term of, you know, it's -- it's some
25 programming type stuff that can run a query at a

1 later time.

2 Q. Uh-huh.

3 A. Generally, in cases that I've worked on,
4 stored procedures are usually protectable
5 expression.

6 I have not seen a matter where the data
7 itself within the data was granted that protection.
8 That doesn't mean that that's not possible, but I
9 haven't seen that.

10 Q. Okay. Let me -- Well, let me ask this in
11 the context of Exhibit 104, that third page there.

12 A. Presentation?

13 Q. You've got it. You're open to it right
14 now.

15 If I told you that the left column and the
16 middle column are the exact sequence of test
17 procedures from the ECI database, would that
18 surprise you?

19 This is a document drafted by Ms. Davis
20 right at the beginning of her work on this case --
21 on the RES software.

22 A. That would not surprise me, no.

23 Q. Why?

24 A. Because I would expect Carrier to be
25 running the same tests, because they need to run the

1 same tests in order to quality-control their air
2 conditioning units.

3 I also would expect Carrier to work with
4 the vendor to develop those tests.

5 Q. Where did they get the tests? Who --
6 who -- who created the tests?

7 A. I heard from testimony from James Rindin
8 this he worked with Mr. Olita to develop the tests,
9 the scripts, the sequence of steps for testing those
10 units together.

11 Q. How about the 267 tests themselves?

12 A. You mean the names?

13 Q. Not the names, the data behind the names,
14 the -- have you -- have you compared the 267 tests
15 that were in the ECI database to the 267 tests that
16 are in the MES database, if there are 267 tests
17 still there?

18 MR. ESTEP: Object to form.

19 A. Yeah, I'm not even sure on that question.

20 Q. (BY MR. GIBSON) Have you compared the
21 tests -- have you compared the valid tests from the
22 ECI database to the valid tests in the MES database?

23 MR. ESTEP: Object to form.

24 A. So you're talking about have I compared the
25 test sequences that are from --

1 Q. (BY MR. GIBSON) Not the sequences --

2 A. -- the scripts?

3 Q. -- the tests themselves.

4 A. I'm not sure what you mean, but that's not
5 something that I was asked to do.

6 I was asked to look for evidence that the
7 APIs had been copied. And from what I could see,
8 the names of the APIs were not present. I'd found
9 in the source code where the backing VB6 source
10 code, you know, runs through the case statements to
11 execute what is on the 267 list. But it was my
12 understanding, and I also heard at the hearing, that
13 those are just names. I've also seen the copyright
14 registration rejection letter.

15 Q. Well, that's going to be handled with the
16 Copyright Office.

17 But no matter what some third-party does,
18 what I'm asking you is, there's a test name and then
19 there's the test behind the name. It's not just --
20 there's not just a name in there without data behind
21 it to --

22 A. That's not how --

23 Q. -- execute? Go ahead.

24 A. I'm sorry. That's not how it works in the
25 database. I mean, as previous people have

1 testified, that name is a flag, it's a reference,
2 it's an identifier to a bit of code and it doesn't
3 work without that code.

4 Q. Right.

5 A. The code is in the VB6. And the VB6 was
6 never provided to Amtec. They had no access. I
7 mean, that's another bearer you have to hit, you
8 have to show that they had access. Again, that's my
9 understanding of copyright infringement claims.

10 Q. So if the code behind the names is exact in
11 both databases, you don't have a problem with that?

12 A. I don't --

13 Q. It's a hypothetical. Go ahead.

14 A. -- understand your question.

15 Q. Okay. You have a name. We can look at
16 these right here. Let's see, what are they testing
17 here? SET OFF QUICK EQSV.

18 A. Okay.

19 MR. CARR: Can we take a break?

20 MR. GIBSON: Okay. Yeah.

21 MR. ESTEP: We'll take a break and we'll
22 pick back up with the main display page.

23 THE WITNESS: Okay.

24 (Recess.)

25 Q. (BY MR. GIBSON) All right. Just, I'm going

1 to ask a few questions along the line we were just
2 talking about and then move on.

3 Would it have been a mistake by Carrier to
4 have given Mr. Olita's Basic Language source code
5 for its IPCS stations to any third-party, including
6 Amtec?

7 MR. ESTEP: Object to form.

8 Q. (BY MR. GIBSON) Go ahead.

9 A. Are we talking about the VB6 source code?
10 Are we talking about --

11 Q. Anything. Anything from Mr. Olita. Any
12 source code from Mr. Olita --

13 MR. ESTEP: Same objection.

14 Q. (BY MR. GIBSON) -- or ECI.

15 A. I believe that would have been
16 inappropriate to provide it.

17 Q. All right. And you've been told that
18 Carrier did not have Mr. Olita's source code;
19 correct?

20 A. Correct.

21 Q. Any -- any of it?

22 A. Well, the VB6 source code.

23 Q. Have you been told that any other source
24 code was in Carrier's --

25 A. I reviewed Mr. Olita's deposition where he

1 said there were a hundred and -- I mean, this is
2 also in my report.

3 Q. Okay, you're talking about the DOS code.

4 A. Yes.

5 Q. Anything else besides what's in your
6 report?

7 A. Nothing other than what's in my report.
8 I've listed all the documents that I relied upon to
9 form my opinions in my report.

10 Q. Now you've heard the -- you heard the
11 testimony about the HVAC language Mr. Olita created
12 for the HVAC industry yesterday.

13 Do you -- do you know anything about that?

14 A. That's the first time I heard it was
15 yesterday.

16 Q. And if the -- Okay. So if the HVAC
17 language was the same, whether it was under DOS or
18 WINDOWS XP, the source code wouldn't have changed
19 for the stored procedures -- I'm sorry,
20 the stored -- Let me rephrase it.

21 If the HVAC language remained the same from
22 the DOS days to the WINDOWS XP days, the valid tests
23 and the test procedures would have been the same
24 notwithstanding the move to WINDOWS XP; correct?

25 A. That's assuming that the HVAC language

1 is -- I'm confused by that whole part.

2 Q. Well, let me ask you a quick question.

3 Have you ever created your own language
4 like my experts have?

5 A. I have not created my own programming
6 language.

7 Q. Have you ever created your -- So, okay.
8 Have you heard of that happening?

9 A. Sure.

10 Q. Okay.

11 A. Yeah, I've heard of smaller languages used
12 in very specific purposes. There have been
13 proprietary languages used in cases I've worked on
14 regarding sending commands to label printers where
15 they were only used for that context.

16 Q. Okay. Is it fair to say that when
17 Mr. Olita and ECI first implemented this system in
18 the Carrier plant it was cutting edge? Is that your
19 understanding?

20 MR. ESTEP: Object to form.

21 A. I can't comment on what was cutting edge in
22 the HVAC industry. I'm not an expert in the HVAC
23 industry.

24 Q. (BY MR. GIBSON) And is anything that
25 you've learned in the two depositions yesterday and

1 in the mistakes or mistake you've seen, has any of
2 that changed your opinion at all?

3 A. It has not, no.

4 Q. Now, yeah, back to the structure sequence
5 and organization. Did you hear Mr. Carr's testimony
6 on that yesterday --

7 A. I did not hear Mister --

8 Q. -- that it really doesn't matter if there's
9 a change?

10 A. -- Carr testify on the structure sequence
11 and organization specifically.

12 Q. So if the format of the MES database is
13 different from the format of the ECI database, would
14 that alone mean that there's no copying?

15 A. That alone?

16 Q. Yes.

17 A. No.

18 Q. All right. What about, how does -- Okay,
19 that was the structure. So now let's add to it if
20 the structure and sequence are different between the
21 two databases, would that mean there's no copying?

22 A. I believe not. I believe that the test is
23 the structure sequence and organization, and those
24 are the items for review.

25 So if you wanted to compare databases for

1 evidence of copying, you would want to look at the
2 structure, how the tables are laid out, how they
3 relate to each.

4 You would want to look at the sequence, how
5 are the tables interacting, in what order, how do
6 they go. Structure is also related to the types of
7 the fields, the field lengths, the constraints,
8 which Mr. Carr talked about.

9 And the organization is generally how the
10 tables are laid out and how they relate, so. And
11 that's generally for the substantial similarity
12 comparisons that you would want to do normally in a
13 copyright --

14 Q. Okay, one other --

15 A. -- matter.

16 Q. Okay, I'm sorry. Are you finished?

17 A. Yes. Sorry.

18 Q. One other sentence in your Summary of
19 Opinions, looks like the second -- third-to-last,
20 "Mr. Chenault has not provided enough information
21 for his analysis to be replicated, validated,
22 independently verified or relied upon.

23 Further, material issues with
24 Mr. Chenault's report throw his database testimony
25 into question."

1 Did Mr. Chenault and Mr. Carr's deposition
2 testimony for the last two days clear up your
3 questions about what they did or didn't do in this
4 case?

5 A. It cleared up some of the questions I had.

6 Q. What question do you still have of
7 Mr. Chenault or Mr. Carr with regard to what they
8 did?

9 A. I'm still curious to know what the default
10 stored procedure that's on, I believe it's page 9 of
11 Mr. Chenault's report, about the origin of that.
12 I've heard from Mr. Stewart that he watched the
13 video and that that procedure was not there.

14 But in the scheme of things it really
15 doesn't matter too much about that procedure because
16 it's automatically generated code so not likely to
17 receive protection.

18 Q. Okay. But are you in a position to
19 independently verify what they're saying now that
20 you've heard their testimony?

21 A. I would say no, because I still do not have
22 access to the development database that they relied
23 on or the development spreadsheet report that, you
24 know, was generated from it.

25 I do now know the origin of the blue and

1 red spreadsheet, which was one of my biggest
2 complaints, so.

3 Q. And the development document that was
4 talked about has been sent to Mr. Estep.

5 Has Mr. Estep given that to you yet?

6 A. No. No, he has not. I haven't had time.

7 Q. Do you think maybe -- I'm not sure if I'm
8 understanding your testimony.

9 Is that the one document you need to be
10 able to validate? Do you need anything else?

11 A. Let me review.

12 Q. Okay.

13 A. I need to check my opinion, so.

14 (Witness reviewed a document.)

15 A. So I'm just going to read from my report on
16 the points that I made. And I want to make sure
17 that we have those items, if that's okay --

18 Q. Sure.

19 A. -- in response to your question.

20 So paragraph 38, the SQL query is critical
21 to his conclusions. So the queries that were
22 actually run, I know we saw at least one of them,
23 but there may have been more, specifically, on page
24 16 and page 24, any and all queries run.

25 Now we do have the methodology for the

1 creation of the red and blue spreadsheet, so I at
2 least understand that.

3 I still don't understand why both Mr. Carr
4 and Mr. Chenault relied only on spreadsheet reports
5 rather than the databases themselves, considering I
6 do know that at least based on the report access to
7 the RES database was provided because there's
8 screenshots for that database.

9 There's been no link shown between the
10 spreadsheet and the actual RES software -- This is
11 all in my report -- software or database.

12 Column H, the description field does not
13 appear -- I should say the contents of the
14 description field in Column H do not appear in the
15 actual 19 RES database tables.

16 I exported all the database objects and
17 searched for those contents that I extracted
18 painstakingly from that red and blue spreadsheet to
19 search for them, and I did not find any. And,
20 again, that's now in paragraph 41.

21 I do now understand the origin of the
22 Carrier side of the description field.

23 And, lastly, it's my understanding that
24 Mr. Chenault said that yesterday he was not an
25 expert in Microsoft SQL, so that does cause issues

1 with his database testimony, at least that's my
2 understanding of it.

3 Q. Do you have any problem with Mr. Carr's
4 database testimony based on his experience?

5 MR. ESTEP: Object to form.

6 A. That might be a new opinion. But my
7 thoughts on the matter are simply why was the
8 database not reviewed when you had access to it for
9 at least a month in order to prepare your response
10 to my report.

11 Q. (BY MR. GIBSON) Which database?

12 A. RES database.

13 Q. Oh, I see.

14 A. The database where the alleged copying has
15 occurred. All the conclusions are based on review
16 of an Excel spreadsheet, which is not the best
17 evidence that was available, to my understanding.

18 Q. How do you normally view data in a
19 relational database?

20 A. They would usually use either SQL Server
21 Management Studio or some other sequel database.
22 There's -- there's other tools you can use, or you
23 can use the script to rebuild the database, which is
24 what I did for the ECI registered database.

25 Q. Can you use Excel to do that?

1 A. You would have to export from Excel and
2 you'd have to know where it came from. And as an
3 independent expert you would want to be able to say,
4 "Yes, I know where this data came from," as opposed
5 to, "This is a spreadsheet."

6 If I was provided a spreadsheet, I would
7 say, "Okay. Where is the database? I need to
8 verify that this actually exists in the database."

9 Q. Okay. If you have confirmation it exists
10 in the database, is that good enough from a -- from
11 a good source?

12 A. As an --

13 MR. ESTEP: Object to form.

14 A. As an independent expert, I would want to
15 see it myself.

16 Q. (BY MR. GIBSON) Well, if the source --

17 A. That's me.

18 Q. If the source of the spreadsheet came from
19 J.C. Stewart and Paula Davis in an email between the
20 two of them, is that a pretty good source in this
21 case?

22 A. I would say that that spreadsheet
23 definitely came from J.C. Stewart in an email to
24 Paula Davis. I'm not sure --

25 Q. Actually, the other way around.

1 A. -- where the data in that spreadsheet came
2 from, though. I don't know the query, I don't know
3 where it came from. I don't know how it was
4 created.

5 I mean, our reputation as independent
6 experts requires us to validate to the level that we
7 can.

8 Q. As a forensic analyst in software
9 litigation, what would you have done in this case if
10 the plaintiff -- if I had hired you?

11 A. So should I understand you're asking me
12 what I would do as your expert?

13 Q. To find out -- Yes, to find out if the
14 claims we're making were sustained?

15 A. First, I would start --

16 Q. Go ahead.

17 A. -- it is my understanding the burden of the
18 proof is on the plaintiff to show that copying has
19 occurred. So, to start, I would first need to
20 understand what the registered work is.

21 And, in this case, it's my understanding
22 that it's the VB6 source code and the ECI database
23 scripts, as well as the 267 API names.

24 Q. Okay.

25 A. And then I would need to determine that

1 those names were present in the registered work,
2 because oftentimes there can be mistakes in that
3 regard. I don't mean cleanroom mistakes in this,
4 just in clerical errors in terms of, perhaps,
5 registering the wrong version of a software.

6 So I would need to verify that it existed
7 in the database in the original product. And then I
8 would need to search and determine if the same data
9 or slightly modified data or if there was evidence
10 that, you know, had it been used in -- in the new
11 product. And I would want to look at whatever the
12 best evidence available is for those things. And
13 the database, it's the database with -- assuming you
14 still have the database.

15 If the database had been lost, perhaps the
16 Excel spreadsheet would be the best possible
17 evidence. It's just it's always imperfect.
18 Whatever you have, it's -- you want to look at the
19 best available evidence.

20 Q. Would slightly aliased names, changing the
21 valid test names and slightly aliasing them, be a
22 red flag to you?

23 A. I'm still not quite sure what you mean by
24 the aliasing of the names. I haven't seen a list of
25 allegedly aliased terms provided, so I don't

1 understand.

2 Q. How about anything that's contained in
3 Exhibit 121 between J.C. Stewart and Paula Davis
4 regarding what she has seen and what he has provided
5 her?

6 (Document was passed.)

7 A. And I have not seen this document prior.

8 Q. That's why I'm giving it to you, 'cause I'm
9 going to -- And I'm showing you Exhibit -- Well, it
10 was 121 yesterday. Right? One twenty --

11 MR. ESTEP: It is marked as Exhibit 121.

12 MR. GIBSON: Okay. And it's 106 to
13 Paula Davis's deposition, but -- Anyway, it's the
14 same document.

15 A. Okay, I've reviewed it.

16 Q. (BY MR. GIBSON) Okay. I just want to go --
17 the first page, number 2 under the email from
18 Ms. Davis to Mr. Stewart dated September 25th, 2014,
19 at 1:30 p.m., the second request. "What are the
20 following report parameters and where does the data
21 come from: Refrigerant archive add date, unique
22 unit ID, custom tags."

23 Do you know one way or the other and have
24 you checked to see what the answer was to that
25 question from Mr. Stewart?

1 A. This is the first time I've seen this
2 document, so I -- I would not have been asked to do
3 that.

4 Q. "What brand model of bar code scanner do
5 you use?"

6 Have you seen anything, any answer to that
7 question? Any evidence?

8 A. Have not, no.

9 Q. Okay. If we can go to the second page of
10 that document, the top. I guess it begins on the
11 previous page. It's a email from Jeremy Fleming,
12 dated September 16, 2014. It's at 7:46 a.m. To
13 J.C. Stewart with a cc to Paula Davis.

14 It says, the second sentence, "Looking
15 through all the items you put on my flash drive, I
16 see lots of information, but I can't find the
17 PowerPoint slides you showed us. Can you send those
18 to us also. It was a good overview."

19 Have you seen either that flash drive or
20 the PowerPoint slides that are referenced in that
21 document?

22 A. Don't believe so. This is the first time
23 I've heard reference of them.

24 Q. Okay. Do you think it's important for you
25 as an expert in this case to look at those --

1 A. I think it's important to --

2 Q. -- two items?

3 A. -- know what's on there. I think it's
4 important for your experts to know what's on there
5 in order to analyze. But I doubt that Carrier would
6 ask me to look at that.

7 Q. And if you were -- if you were advising
8 Carrier on what it should and shouldn't produce in
9 discovery, would you advise Carrier to produce that
10 flash drive and produce those Power slide --
11 PowerPoint slides?

12 MR. ESTEP: Object to form.

13 A. Well, again, I'm not a lawyer, but I would
14 certainly want to know what was sent --

15 Q. (BY MR. GIBSON) Okay. Now, isn't --

16 A. -- if it still exists.

17 Q. As a forensic person, you're trained --

18 A. I am trained.

19 Q. -- you're trained to look for problems, for
20 issues that come up in these types of cases.

21 Isn't it typical that the person in
22 Mr. Stewart's shoes asks the other person to bring a
23 flash drive so we could put some information on it
24 and you can take it back to your office, what you
25 see there on September -- in the email of September

1 10th, 2014?

2 MR. ESTEP: Object to form.

3 A. I'm not sure I understand the question in
4 part.

5 Q. (BY MR. GIBSON) Okay. You've never seen
6 that done before where the person in Mr. Stewart's
7 shoes here asks the person in Mr. Fleming's shoes
8 from Amtec to come with his own flash drive, USB
9 flash drive?

10 Do you see that there in the September 10th
11 email?

12 A. I mean, I would imagine that if they're
13 working on design they would be sharing documents
14 related to the design of the software. I'm not sure
15 what the question is.

16 I mean, I've -- you know, without knowing
17 what's on that drive it's really hard to say whether
18 something improper was shared or not.

19 Q. I'm just asking if it's suspicious at all.

20 MR. ESTEP: Object to form.

21 A. If it's suspicious?

22 Q. (BY MR. GIBSON) To you. To you as a
23 forensic analyst, is it suspicious?

24 MR. ESTEP: Same objection.

25 A. I'm not sure. Again, I don't really know

1 the context of this thread.

2 Q. (BY MR. GIBSON) It's either suspicious or
3 it isn't. I mean, I don't think "not sure" is a
4 good -- a good answer. Come on.

5 MR. ESTEP: Object.

6 A. I don't know.

7 MR. ESTEP: I object to form.

8 Q. (BY MR. GIBSON) You don't know if it's
9 suspicious?

10 A. I don't know if it's suspicious based on
11 the context.

12 Q. What is the context that you're seeing
13 there?

14 A. From the thread that I can see here, it
15 seems like they're talking about design and
16 development and that Mr. Stewart asked Mr. Fleming
17 to bring a USB flash drive because he has several
18 files that may be useful.

19 I don't know what those files are.

20 And then they're talking about an NDA. So
21 it's probably related to proprietary information
22 that's going into the new RES software.

23 I don't know what "looking at all the items
24 you put on my flash drive" means, I see lots of
25 information. So not knowing, you know --

1 Q. My question is --

2 A. -- I think it would -- I think --

3 Q. -- why wouldn't Mr. Stewart just put -- put
4 it on his own USB flash drive and give it to him
5 when they -- when they get there?

6 A. Oh. I don't know. Yeah.

7 Q. I'll ask him that.

8 A. Okay.

9 Q. I'm asking you if it's suspicious. I don't
10 know you don't know --

11 A. Right. I think the information --

12 Q. -- 'cause you haven't asked the question.

13 A. -- contains --

14 Q. But my question is, does it look
15 suspicious?

16 My question is not whether it was done or
17 not or why it was done or what was in somebody's
18 brain. My question to you is does it look -- as
19 a -- like a private eye in the software industry,
20 does it look suspicious to you?

21 MR. ESTEP: I object to form.

22 A. What I would say is that I would be
23 interested to know what is on that USB drive. I'm
24 not going to speculate on whether that's suspicious
25 or not.

1 Q. (BY MR. GIBSON) If Mr. Stewart put
2 information on there from the ECI database or the
3 ECI software, would that be another mistake?

4 MR. ESTEP: Object to the form.

5 A. This is a hypothetical?

6 Q. (BY MR. GIBSON) This is another
7 hypothetical, of course. I said "if."

8 A. I would say that if -- if Mr. Stewart put
9 on code from the VB6 system, that would definitely
10 be improper.

11 If he put on the structure and sequence and
12 organization of the database, I think that would be
13 improper. But there's a lot of tables in the
14 database, and, again, none of these projects go
15 perfectly.

16 As far as the data, I'm not so sure. So I
17 think a lot of the data was generated together.

18 Q. Okay. And if there are any -- any -- Same
19 question with respect to the PowerPoint that's
20 mentioned. Would your answer be the same for the
21 PowerPoint slides?

22 A. I'm not sure what's in the PowerPoint
23 slides. I mean, if they --

24 Q. Well, hypothetically.

25 A. If they disclose the elements that

1 Mr. Olita has alleged, there is intellectual
2 property, you know, then I would think that would
3 not be proper for that to go, you know, excluding
4 the data that's in the database.

5 Q. If Mr. Olita did not give the DOS Quick
6 Basic source code in that 4.0 Quick Basic you
7 mentioned in your report to Carrier, do you know how
8 they got it?

9 MR. ESTEP: Object to form.

10 A. I have no idea how it got there.

11 Q. (BY MR. GIBSON) Do you know how they could
12 have gotten it without Mr. Olita giving it to them
13 directly?

14 A. I assumed that Mr. Olita maybe left it
15 there or it was part of the code that was -- I have
16 no idea. I would have to guess.

17 Q. I mean, I'm saying, couldn't they -- can
18 they get it from what they have on their system?

19 A. Some of the code in there appeared to be
20 compiled Quick Basic code, which I would expect to
21 be available. And some of it appeared to be source
22 code, which I would not expect to be there
23 necessarily.

24 Q. You answered my question.

25 So other than the brief conversation you

1 had with Mr. Hoal at the preliminary injunction
2 hearing and the 20 or so conversations you've had
3 with J.C. Stewart, is there anybody else at Carrier,
4 not counting lawyers, that you've talked to?

5 A. Maybe there was a person who got us into
6 the conference room there when we were there for the
7 inspection, but I can't think of anyone else I've
8 had a substantive conversation with.

9 Q. All right. What about Mr. Femec, have you
10 talked to Mr. Femec?

11 A. I have a little bit, just in regard to the
12 issues surrounding the LabVIEW software, which I am
13 not an expert in.

14 Q. What were you -- what was your question and
15 what was his answer?

16 A. I'm not sure if I had too many questions
17 about it, actually, now that I think about it.

18 We did talk -- it might have been more
19 about sort of the expectations of expert witnesses
20 in matters like this.

21 Q. Did you get Mr. Femec involved or did
22 somebody else find Mr. Femec?

23 A. Counsel found Mr. Femec.

24 Q. Okay. Now, did you advise counsel to --
25 did you have anything to do with that? Did you

1 advise counsel to find a LabVIEW expert?

2 A. No.

3 Q. Okay. Now, anybody at Amtec? Have you
4 talked to Mr. Fleming?

5 A. I don't believe so, no.

6 Q. Have you talked to Ms. Davis?

7 A. No. Definitely not.

8 Q. Anybody else at Amtec?

9 A. Not that I know of, no.

10 Q. Okay. You talked to Mr. Steakley, their
11 lawyer?

12 A. Actually, Mr. Steakley engaged my firm on a
13 previous matter, or one of his colleagues did, in a
14 different case. But, no, not a conversation --

15 Q. Not about this case?

16 A. -- related to this case.

17 Q. Okay. Let's see.

18 A. I believe we got a referral from him to
19 Farris Bobango.

20 Q. Anybody else I hadn't covered that you've
21 talked to in this case, whether they're internally,
22 an employee at Carrier, or externally, third-party
23 contractor like Amtec, Mike Boals, Mr. Femec?
24 Expert? Anybody?

25 A. At the injunction hearing we talked a

1 little bit with the person who was going to give a
2 presentation about the number of people employed at
3 Carrier and the impact of Carrier -- I'm trying my
4 best to remember. That's all I can think of.

5 MR. GIBSON: Okay.

6 THE WITNESS: Is now a good time for a
7 bathroom break?

8 MR. GIBSON: Sure.

9 (Lunch recess.)

10 Q. (BY MR. GIBSON) All right. Mr. Siegel, I'm
11 just going to go through my understanding of how the
12 ECI software works with the ECI database and with
13 the hardware, and then I'm going to go through how I
14 understand before, when it was implemented, of
15 course, and then how nowadays the RES software
16 works. Okay?

17 A. (Witness nods head up and down.)

18 Q. As I understand it, the ECI software or the
19 SQL stored procedures would call to the database to
20 pull, retrieve, however you want to say it, the
21 command -- the valid tests and test procedures from
22 the ECI database, which would then send the command
23 to the software as to what the software needed to
24 tell the hardware to do and what to test.

25 Is that a fair representation?

1 If I've said it wrong, tell me how you
2 understand it.

3 A. Okay, that's not quite correct.

4 Q. Okay. Go ahead.

5 A. From viewing the -- you said that the
6 stored procedures would be doing this. From my --

7 Q. Well, the SQL stored procedures.

8 A. Right. And there's only -- from my review
9 of the registered script code, there's only three
10 stored procedures.

11 Q. Let's stop right there.

12 You can have the hard commands in the
13 software itself or you can have them as stored
14 procedures in the SQL?

15 A. Right. My point is that the stored
16 procedures in the SQL server are not doing that,
17 it's done in the code.

18 Q. But you could do either; correct?

19 A. Yeah. Yes.

20 Q. Does it have to do -- the calls have to be
21 made --

22 A. You can have --

23 Q. -- one way or the other?

24 A. -- the calls to the database be in stored
25 procedures for the read/write, all that, you can

1 have it in the code.

2 Q. Okay. So when I said that, that's why I
3 used both because in some cases it might -- ECI used
4 it more -- used more hard stored procedures;
5 correct?

6 A. Yes.

7 Q. Okay. Go ahead.

8 A. So -- All right, could you rephrase the
9 question?

10 Q. I'm just looking back at him.

11 A. I wanted to clear up the stored procedure
12 issue.

13 Q. Well, back to what I was talking about. I
14 understand the MES database has 28 SQL stored
15 procedures and the ECI database has three SQL stored
16 procedures. But I also understand that the ECI
17 software has hard -- has the stored procedures as a
18 lot of hard procedures, whereas, they're less hard
19 procedures in the RES database -- I mean, RES
20 software.

21 A. Sorry, I know it's a lot.

22 Q. So does that sound -- does that sound
23 correct?

24 A. I would say that it's database calls that
25 are in the software as opposed to stored procedures.

1 They are different things.

2 Q. Okay. But, nevertheless, some way the
3 software or the stored procedures are making calls
4 to the database, to the stored procedures in the
5 database; correct?

6 A. The software is interacting with the
7 database, either using stored procedures or hard
8 coded calls to the database or a mix of both.

9 Q. Okay.

10 A. The RES software uses a lot more stored
11 procedures. It looks like the ECI database was not
12 designed to primarily use stored procedures, more
13 hard coded. We've -- we've covered that in --

14 Q. Right. Right.

15 A. -- Mr. Carr's testimony as well.

16 Q. Okay. And then so we have -- And the
17 stored procedures then tell the soft -- command the
18 software to tell the hardware to do X, whatever X
19 is, just to test the units?

20 A. And you're asking what my understanding is?

21 Q. I'm just saying is my understanding
22 correct? I mean, I know it's a little -- I mean,
23 some day we're going to have a jury, so they're
24 going to know even less than I do.

25 But is that a fairly good way to put it, at

1 least as a layperson?

2 A. So from a layperson perspective I would
3 think that --

4 MR. GIBSON: James is shaking his head.

5 A. -- the names --

6 MR. GIBSON: Huh? I'll stop.

7 (Mr. Olita conferred with Mr. Gibson.)

8 Q. (BY MR. GIBSON) I said "stored," okay. I
9 said "stored procedures" twice.

10 There's stored procedures which are a
11 product of the SQL server that make the calls to the
12 database. But those also could be -- those calls
13 could also be made to the database as hard -- as
14 hard stored procedures within the software itself;
15 correct?

16 A. What I'm trying to say is just if you're
17 talking about in the software, just say it's a
18 database call as opposed to a stored procedure.
19 That's all I'm --

20 Q. Okay.

21 A. I'm trying to clear up the terms so that --

22 Q. Okay. 'Cause it's not a stored procedure
23 if it's in the software?

24 A. Right.

25 Q. It's a -- it's a database call if it's

1 in --

2 A. A stored procedure is a term of art --

3 Q. Right. I gotcha.

4 A. -- in the database land.

5 Q. Okay. I've been using "stored procedure"

6 too often, I got -- I'm with you. Okay.

7 Plus, then the calls being made to either

8 the valid -- to the valid test and the test

9 procedures in the database that are then -- that

10 then communicate a command to the software to tell

11 the hardware what to do?

12 Is that a better way to put it?

13 A. You're asking is that how the software --

14 Q. Works.

15 A. -- operates?

16 Q. And database and hardware, basically, how

17 they interact with each other.

18 A. It's my understanding that the software

19 chews up -- And I'm going to use lay terms again --

20 chews up those commands, finds the associated

21 command in case statements in VB6 forms, and then it

22 will execute the required VB6 code in order to

23 interact with the hardware in the way that it's been

24 defined.

25 Q. Okay. Now --

1 MR. GIBSON: Did you find it, Jeff? Okay,
2 good.

3 Q. (BY MR. GIBSON) And then the RES software
4 sends calls to the MES database for the valid tests
5 and test procedures, which then communicate the
6 commands back to the software --

7 MR. ESTEP: Object to form.

8 Q. (BY MR. GIBSON) -- to tell the hardware
9 what to do in the RES system.

10 Does that sound correct?

11 MR. ESTEP: Same objection.

12 Q. (BY MR. GIBSON) And I understand that could
13 be done with the stored procedures. Either -- Let
14 me back up. I'll go a little bit broader since
15 stored procedures are -- there's so many more in the
16 MES database.

17 Either the stored procedures in the MES
18 database or the calls in the RES software call to
19 the test procedures and valid tests, which then
20 communicate back through the software to tell the
21 hardware what to do?

22 MR. ESTEP: Object to form.

23 Q. (BY MR. GIBSON) Go ahead.

24 A. That's my understanding of how the programs
25 work. Again, I'm not a LabVIEW expert, but from the

1 testimony I've heard and read and from what I've
2 seen from Mr. Femec, I understand that's how it
3 works.

4 Q. Now, the way I just said, those two things
5 appear to be pretty much the -- very, very, if not
6 identical systems, almost -- almost identical
7 systems, in the broad sense. I'm not -- I'm not
8 talking about the code or anything, I'm just talking
9 about in the broad sense that's how both systems
10 work?

11 A. What I would say is that that is a function
12 of both systems.

13 Q. Okay, a function.

14 Well, tell me -- well, why do you mean a
15 function? What other functions are you talking
16 about?

17 A. Well, the software can do more than one
18 thing, but, you know, that's -- that is --

19 Q. So the software --

20 A. Well, you're going to say this --

21 Q. Well, let me back up.

22 A. Okay.

23 Q. So you're saying the software doesn't all
24 have to call to the database?

25 A. I mean, you could use the software to do a

1 lot of different things. I'm not sure all the
2 capabilities of the LabVIEW RES software or the VB6
3 software. I was not asked to do that. I can say
4 that is a function of both programs can operate in
5 that way. That is a functionality that they share.

6 Q. Okay. And the test procedures that are
7 contained in both systems, however they're stored,
8 whatever format they're in, you haven't looked at
9 those test procedures, or have you?

10 A. I believe I was provided by you,
11 Mr. Dixon[sic], with the ECI database scripts, and I
12 believe I was provided -- And you can correct me if
13 I'm wrong on this -- with the text format of the
14 data for the test headers, the test procedures, and
15 maybe -- I'm not exactly sure the three text files
16 that came along with that production, but they
17 appeared to be data that would have been in the ECI
18 database.

19 Q. Okay. What about with respect to the MES
20 database, have you looked at its test procedures?

21 A. I've looked in the MES database. I have
22 not kept a keen eye towards the procedures. I mean,
23 it appears that they're there, that there are
24 procedures in there.

25 Q. Okay. How did you get to those procedures?

1 A. They should be within the MES database.

2 Q. Okay. Have you checked to see if they are
3 identical or similar to the test procedures in the
4 ECI database?

5 A. That was not under the scope of my
6 engagement, so no. No.

7 Q. Okay. And then the same question for the
8 valid tests. Have you found them in the ECI
9 database?

10 MR. ESTEP: Object to form.

11 A. If we're -- Sorry. And you also said have
12 I found the valid tests in the ECI database?

13 Q. (BY MR. GIBSON) Yes. Or anywhere. Have
14 you seen the valid -- valid tests --

15 A. I believe the valid --

16 Q. -- that are actually in the database?

17 MR. ESTEP: Object to form.

18 A. Now I reviewed the names of the 267 APIs.
19 And I did search for those in the MES database and
20 did not find them. I did not for the purposes of
21 this assume that they were missing from the ECI
22 database. I did not go back to the ECI database to
23 see what was there, because I was provided the
24 structure, sequence, organization, the empty
25 database that wouldn't have contained those.

1 But I believe they were contained in the
2 text file data that was provided to me. I mean, I
3 would expect them to be there since these tests were
4 run using ECI software.

5 Q. (BY MR. GIBSON) Okay. Something came up
6 with -- Mr. Estep yesterday was talking about the
7 names.

8 And did you not have the Carrier ECI
9 database?

10 A. Did I not have the Carrier ECI database.
11 Do you --

12 Q. The database I'm talking about is the one
13 that existed on the date that it went down and the
14 Amtec database went up.

15 A. It may have been --

16 Q. When I say -- I keep saying "Amtec
17 database." I mean -- When I say "Amtec database,"
18 what I really mean is MES database.

19 A. I probably was provided with access to, but
20 you -- Can you say that again? You just confused
21 me --

22 Q. I'm sorry.

23 A. -- because I heard ECI and then MES.

24 Q. Do you have a copy of -- Did you, when you
25 were doing your analysis, did you have a copy of the

1 Carrier ECI database when it -- when it went into
2 archives and wasn't used anymore in 2015, late 2015?

3 A. I may have been provided a copy of that.
4 But I relied upon the registered scripts and the
5 data that was provided along with the scripts from
6 counsel.

7 Q. Okay.

8 A. I did not use it for any of my analysis and
9 opinions.

10 Q. All right. And Mr. Estep asked the
11 question of, I believe it was, Mr. Carr yesterday,
12 basically, saying if the name is not -- is changed,
13 the name of the test procedure is changed or of the
14 valid tests, then the database will not recognize
15 what you're asking for if the name -- for example,
16 if the name's backwards. Instead the CHECK OFF --
17 I'm just looking at one, CHECK OFF CONTROL VOLTS.
18 If you say CONTROL VOLTS CHECK OFF then the database
19 won't know what to do.

20 Is that -- is that -- am I saying it right?

21 MR. ESTEP: I'm going to object to form
22 because I think you have it backwards from what I
23 asked.

24 Q. (BY MR. GIBSON) Go ahead. If I say
25 the name -- if the name is in there, if we change

1 the name but we don't do something else with that,
2 you won't --

3 MR. GIBSON: What? Yeah, the software
4 won't work. Oh, I'm talking about the data,
5 whatever.

6 Q. (BY MR. GIBSON) The software -- something
7 won't work if you change the names?

8 A. If all you do is change the name in the
9 database, the source code won't know what to do --

10 Q. Right.

11 A. -- with the command, because the source
12 code says, "Hey, case statement, give me this name,
13 I'm going to do this code." If it says, "Hey, case
14 statement, I don't know what that is," the case
15 statement doesn't -- it just gets ignored.

16 Q. Okay. Now, and I know you haven't done
17 this, but I'm going to ask you. It's more of a
18 hypothetical.

19 Let's say in the ECI database you have a
20 procedure that says CHECK OFF CONTROL VOLTS. And
21 then in the MES database you have the same
22 procedure, but it's now called CONTROL VOLTS CHECK
23 OFF.

24 Even though those names are different, if
25 the procedures are the same then is there a

1 violation of copyright or some other trade -- trade
2 secret infringement?

3 A. That depends.

4 Q. Okay. Tell me why it depends, and what do
5 you mean by that?

6 A. So -- And, again, I'm not giving any legal
7 opinions --

8 Q. Okay. I know.

9 A. -- I'm just basing everything on my -- I
10 just want to make sure it's clear, I'm not a lawyer.

11 Q. Okay.

12 A. But it is my understanding of the copyright
13 law that protection will generally extend to
14 original creative expression and works. And, also,
15 there are things that limit that creative
16 expression. In my report I talk about scènes à
17 faire, which is largely just the trappings that need
18 to be there to do what the product needs to do.

19 Q. Okay.

20 A. You would imagine that they would both --
21 both the ECI software and the RES software would
22 need to be able to scan the bar code on the unit to
23 get information off the unit before you test it. I
24 would imagine that would be present in both, that
25 would likely fall under scènes à faire and not

1 received protection. It's up to the trier of fact
2 to decide that, but that's what the argument would
3 be.

4 Q. That's the unit itself? I'm talking about
5 the --

6 A. I realize you're getting to the tests as
7 well.

8 So another thing of scènes à faire is
9 things that are dictated by the requirements of the
10 company or the customer or the requirements of the
11 software. If certain elements must be tested as
12 required by the customer, then those would not
13 likely receive protection under copyrighting. So if
14 it is required -- And can you say that name of that
15 test again?

16 Q. Well, I just -- I'm looking at this and
17 I'm -- I'm just -- whatever --

18 A. Just as an example.

19 Q. I'm just looking at examples as CHECK OFF
20 CONTROL VOLTS, and I said CONTROL VOLTS CHECK OFF.

21 A. Sure.

22 Q. I mean, it's the same --

23 A. So if it needs to be verified that the
24 control volts are off regardless of the software
25 that is in use, that likely would not receive

1 protection as the name.

2 Q. Okay.

3 A. That's the point I was trying to make.

4 Q. And would it -- would it matter how
5 intricate the stored -- not stored, but the --
6 Strike that.

7 Would it matter how intricate the test
8 procedure is? In other words, the more complicated
9 it is and the more code involved in implementing it
10 does that -- does that receive more protection than
11 something that's fairly easy to produce?

12 A. Let me think for a second.

13 What I would say is that the code that
14 actually executes those commands would likely
15 receive protection.

16 But it is my understanding that the code
17 was never provided to the developer of the ECI --
18 the ECI VB6 code was never provided to the Amtec
19 developer to use as a basis for anything.

20 Q. Well, that leads me to your music analogy,
21 which you knew I was going to get to that, didn't
22 you?

23 A. I figured eventually. I am a musician, so.

24 Q. With page 8 through 10, is that where it --
25 No.

1 A. Music analogy is on page 10.

2 Q. Yeah. Okay.

3 All right. My question is a little
4 different than what you bring up there, but it --
5 I'm going to ask you -- These are all hypotheticals,
6 by the way. I'm going to ask you the hypothetical.

7 Let's just say I write out a song and I
8 have -- with all the notes, and I have my sheet
9 music. And you take my sheet music. Let's say it's
10 three pages. You take my sheet music and you Xerox
11 it, then you take it to a recording studio with some
12 other members of a band and record that song.
13 You've -- And let's say before I -- you get it I've
14 actually copyrighted the sheet music. Okay?

15 You've violated my copyright at that point;
16 right?

17 A. Again --

18 Q. That's pretty obvious.

19 A. Not a legal conclusion, but, yeah, I would
20 say definitely.

21 Q. Now, a little bit less, but almost as bad.
22 Let's say the same thing except you actually sit
23 down and take my three pages of sheet music and
24 write out the sheet music yourself, but you're --
25 you're looking at my sheet music and copying it as

1 you do that. Then you take it and record the song.

2 You're still violating my copyright; right?

3 A. I would say for the music, yes, that's
4 true.

5 Q. Okay. You didn't download anything, you
6 didn't copy anything, you just wrote it out by hand?

7 A. That is a literal copy of the sheet music,
8 yes.

9 Q. Okay. Now, let's say I -- we bring a
10 second person in and that person takes the sheet --
11 my sheet music and calls you up on the telephone and
12 reads you the notes and you write them out and then
13 you go record the song.

14 That would violate your -- my copyright as
15 much as the other two; right?

16 A. If they read it to you such that the copy
17 that is made is a literal copy, then I would say,
18 yes, that would be a violation.

19 Q. And then, finally, let's just say you see
20 my sheet music and you start playing it on an
21 instrument you have and so you learn the notes by
22 heart. Then a month later you go write those notes
23 down, you have them memorized, then you go record it
24 and you go play that song and record that song and
25 sell it.

1 You've violated my copyright again; right?

2 A. I would say again, if you are making a
3 literal copy, then I agree with you.

4 Q. Okay. So when -- if Mr. Stewart sent or
5 somebody else at Carrier sent Ms. Davis information
6 that they could only get from the ECI database or
7 ECI software, even if she didn't use it, it would be
8 a violation of ECI's copyright; correct?

9 A. That is not my understanding. My
10 understanding would be that it would need to be
11 used.

12 Q. Okay.

13 A. Also, if you only send somebody three notes
14 out of an entire piece, it is very unlikely that
15 that piece that you compose out of those three notes
16 is going to become a new or infringing work.

17 Q. But that's covered --

18 A. The amount --

19 Q. -- infringement.

20 A. -- is what matters.

21 Q. But what about trade secrets?

22 A. Trade secrets is an entirely different ball
23 game.

24 Q. I can't send you the specs on -- I can't
25 send you the specs on somebody else's software

1 that's their trade secret information; correct?

2 A. It's hard to switch gears right in the
3 middle of copyright to trade secret, because there
4 are so many different considerations you have to
5 worry about in terms of steps taken to protect the
6 material that was believed to be a trade secret and
7 whether people know what the trade secrets are.

8 But in your hypothetical example --

9 Q. Yes.

10 A. -- if it is known that those three notes
11 that are sent over the wire are trade secrets and it
12 is clear that steps have been taken to protect
13 those, then I would say that would be
14 misappropriation in that instance.

15 Q. Okay. And mistakes. So -- And I know
16 you're using "mistake" fairly broadly, saying no
17 matter how it affects the ultimate decisions by the
18 trier of fact in this case, Mr. Stewart should not
19 have sent that spreadsheet to Ms. Davis.

20 Is that -- that's a mistake?

21 A. As long as we're talking about that C zero,
22 whatever, 82 --

23 Q. Yes.

24 A. -- spreadsheet. I do not believe he should
25 have sent that in regards to maintaining, you know,

1 the -- What did I say in my report? "In order to
2 continue along the lines of principles of cleanroom
3 design." That was not appropriate, that was a
4 mistake in that regard.

5 Q. But by "mistake," you're not making -- you
6 don't know how that affects the legal conclusions in
7 this case?

8 A. Correct. I don't know if that material was
9 used, I don't know how that material was used, I
10 don't know -- Yeah.

11 Q. Okay.

12 A. I'll leave it at that.

13 Q. Do you know what versions of the ECI
14 database you looked?

15 A. I reviewed the ECI database script code
16 that was produced in response to the request for the
17 script that represented the registered work in the
18 copyright.

19 Q. Now, is everything that you have been asked
20 to testify to and then as we sit here right now that
21 you think you'll be testifying to contained in this
22 report that's one twenty --

23 A. I don't think I have a mark on this.

24 Q. What did we decide it was?

25 A. Is it this one?

1 Q. Yeah, there it is, 123. Does that contain
2 all the opinions that you're going to give in this
3 case, as far as you know, as we sit here right now?

4 A. As far as I know, this is the extent of my
5 engagement.

6 Q. Have you been asked to do anything else so
7 far?

8 A. If we go to trial, I've been asked to show
9 up.

10 Q. Okay. If you're asked to perform any other
11 analyses or just think about this case down the road
12 between now and May 29th and come up with some more
13 conclusions or make another analysis, will you let
14 me know through counsel that you've -- I don't want
15 to find out for the first time at trial that you've
16 changed anything, okay --

17 A. It's my --

18 Q. -- or expanded.

19 A. -- understanding that counsel would at
20 least contact you if they're having me do something
21 else along those lines.

22 Q. All right. So --

23 A. But, yeah, I will inform counsel.

24 MR. GIBSON: Okay. If we can take about
25 five minutes, I think I'm almost done.

1 MR. ESTEP: Sure.

2 (Recess.)

3 Q. (BY MR. GIBSON) Mr. Siegel, we were talking
4 about, basically, what you've done or been asked to
5 do and as is all in your report. I'm going to ask
6 you just a few questions to make sure I understand
7 what you've done.

8 Have you made a trade secret analysis as to
9 whether there's a trade secret violation between the
10 ECI software and the RES software?

11 MR. ESTEP: Object to form.

12 A. Insofar as the 267 names were alleged as
13 identified trade secrets in this case, I did do an
14 analysis in that I searched for the 267 trade secret
15 names in the new MES database to see if they were
16 present, and I did not find them.

17 I also searched for those alleged trade
18 secret names in the LabVIEW software and text to see
19 if they were present, and I did not find them.

20 Q. (BY MR. GIBSON) Okay. Now my understanding
21 is that you looked at -- when you looked at the ECI
22 database, you looked at the ECI database for just
23 structure and it was empty. In other words, you
24 didn't look at any of the data within the ECI
25 database.

1 A. I reviewed the structure, sequence and
2 organization of the ECI database, which was provided
3 by the copyrighted script, which I believe we got
4 from you all. I was also provided three text files
5 which appeared to be related to the test procedures.

6 Q. Okay. Did you look at a populate -- did
7 you look at a populated ECI database?

8 A. I think the only time I looked at a
9 populated ECI database would have been at the
10 inspection.

11 Q. All right. Now, just to be clear. Can the
12 name of a trade secret be changed but the underlying
13 implementation of the trade secret be copied?

14 MR. ESTEP: I'm going to object to the
15 form.

16 A. So I would say that in this matter that is
17 certainly a thing that could have happened. But one
18 would expect that the implementation would be in the
19 code, and the code is not present in the RES code --
20 the VB6 code, so.

21 Q. (BY MR. GIBSON) Now when you looked at the
22 MES database, did you look at the populated MES
23 database?

24 A. I only looked at it so far as to search for
25 the registered, you know, alleged protected trade

1 secret names.

2 Q. Okay. Did you look at the -- in comparing
3 the two software pack -- or in comparing the two
4 software programs did you look at the software
5 programs as they were -- while they were interacting
6 with the database?

7 A. No. I only performed static code analysis,
8 static database analysis. I was provided only the
9 databases. I was not asked to install or stand up
10 any of these systems for review.

11 Q. Okay. For the most part, the software
12 can't do much without the database and the database
13 can't do anything without the software. Correct?

14 A. With regard to these tests that we have
15 been talking about, the valid tests in ECI -- And
16 I'm not exactly sure the name of it -- the tests in
17 the MES database, I would say that they would
18 require the database and the software hand-in-hand
19 to work.

20 Q. Which is why Mr. Chenault felt he needed to
21 run his analysis in the Carrier plant during a live
22 testing at the plant; correct?

23 MR. ESTEP: Object to form.

24 A. I can't speak to why Mr. Chenault felt that
25 way.

1 Q. (BY MR. GIBSON) Well, do you agree with his
2 opinion that he needed to be able to do it at the
3 plant?

4 A. I would say no. I would say that he could
5 review the code to see where it should be pulling in
6 data. He was provided the database, he should be
7 able to see the entry points and exit points of the
8 code, if he's an expert in LabVIEW.

9 I'm -- I'm not an expert in LabVIEW code, I
10 would assume that that's what he would be able to
11 do.

12 Q. Okay.

13 A. I wouldn't expect him to need to be there
14 if he has a complete backup of the database and the
15 software that works with it.

16 Q. Okay. So if you were in -- Back to if I'd
17 hired you on the plaintiff side in this case. You
18 don't think you would have needed to go to the
19 Carrier plant and actually done a live inspection in
20 production to make your analysis?

21 A. It depends on what point you're trying to
22 make.

23 If you're trying to analyze the software to
24 see what's in the database and how the database is
25 used in relation to the software, you should be able

1 to do that if you have the software and the
2 database. I don't think you would need to be there.

3 In terms of verification of what software
4 is in use, you know, for that purpose it might be
5 useful to go to inspect and see what software is
6 running as far as you could tell from the displays.

7 MR. GIBSON: Okay. All right. All right.
8 Thank you. Appreciate it.

9 THE WITNESS: All right.

10 MR. ESTEP: I have no questions.

11 AND FURTHER DEPONENT SAITH NOT
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I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

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IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 19th Day of February 2018.

Lisa J. Blake, LCR, RPR
LCR #483, Expires 6-30-18

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